

# COMMERCIAL LAW (REVISED - 2005)

## THE STATE PRESIDENT

### ORDER No. 10/2005/L-CTN OF JUNE 27, 2005, ON PROMULGATION OF LAW

#### THE PRESIDENT OF THE SOCIALIST REPUBLIC OF VIETNAM

- ❖ Pursuant to Article 103 and Article 106 of the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of 25 December, 2001, of the Xth National Assembly, the 10th session;
- ❖ Pursuant to Article 91 of the Law on Organization of the National Assembly;
- ❖ Pursuant to Article 50 of the Law on Promulgation of Legal Documents,

#### HEREBY PROMULGATES:

#### The Commercial Law,

which was passed on June 14, 2005, by the XI<sup>th</sup> National Assembly of the Socialist Republic of Vietnam at its 7<sup>th</sup> session.

#### President of the Socialist Republic of Vietnam

**TRAN DUC LUONG**

## COMMERCIAL LAW

(No. 36/2005/QH11)

Pursuant to Article 103 and Article 106 of the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of 25 December, 2001, of the Xth National Assembly, the 10th session;

This Law provides for commercial activities.

### CHAPTER 1: GENERAL PROVISION

#### Chapter I

#### GENERAL PROVISION

##### Section 1. GOVERNING SCOPE AND SUBJECTS OF APPLICATION

##### Article 1.- Governing scope

1. Commercial activities conducted in the territory of the Socialist Republic of Vietnam.
2. Commercial activities conducted outside the territory of the Socialist Republic of Vietnam in cases where the involved parties agree to this Law for application, or where a foreign law or a treaty to which the Socialist Republic of Vietnam is a contracting party stipulates the application of this Law.
3. Activities not for profit purposes conducted by a party in its transactions with traders in the territory of the Socialist Republic of Vietnam in cases where the party conducting such not-for-profit activities chooses to apply this Law.

## **Article 2.- Subjects of application**

1. Traders conducting commercial activities as provided for in Article 1 of this Law.
2. Other organizations and individuals conducting commerce-related activities.
3. Basing itself on the principles provided for by this Law, the Government shall specify the application of this Law to individuals who independently and regularly conduct commercial activities without having to make business registration.

## **Article 3.- Interpretation of terms**

In this Law, the following terms shall be construed as follows:

1. Commercial activities mean activities for the purpose of generating profits, including: sale and purchase of goods, provision of services, investment, commercial promotion and other activities for the profit purpose.
2. Goods include:
  - a/ All types of movables, including those to be formed in the future;
  - b/ Things attached to land;
3. Custom in commercial activities means a code of conduct that has an explicit meaning, is established and repeated time and again for a long period of time between and implicitly recognized by involved parties in order to identify their respective rights and obligations in commercial contracts.
4. Commercial practice means a custom that is widely recognized in commercial activities in an area, a region or a commercial domain, has an explicit meaning, and is recognized by involved parties in order to identify their respective rights and obligations in commercial activities.
5. Data message means information created, sent, received and stored in electronic media.
6. Vietnam-based representative office of a foreign trader means a dependent unit of the foreign trader, which is established under the provisions of Vietnamese law to conduct market survey and a number of commercial promotion activities permitted by Vietnamese law.
7. Vietnam-based branch of a foreign trader means a dependent unit of the foreign trader, which is established and conducts commercial activities in Vietnam under the provisions of Vietnamese law or treaties to which the Socialist Republic of Vietnam is a contracting party.
8. Purchase and sale of goods mean commercial activities whereby the seller is obliged to deliver goods, transfer ownership of goods to the purchaser and receive payment; the purchaser is obliged to pay to the seller and receive goods and the ownership thereof as agreed.
9. Provision of services means commercial activities whereby a party (hereinafter referred to as the service provider) is obliged to provide a service to another party and receive payment; the service-using party (hereinafter referred to as the customer) is obliged to pay to the service provider and use the service as agreed.
10. Commercial promotion means activities of promoting and seeking opportunities for the purchase or sale of goods and provision of services, including sale promotion, commercial advertisement, display and exhibition of goods and services, and trade fairs and exhibitions.
11. Commercial intermediary activities mean activities carried out by a trader to effect commercial transactions for one or several identified traders, including representation for traders, commercial brokerage, goods sale or purchase entrustment, and commercial agency.
12. Contractual breach means the failure of a party to perform, to fully or properly perform its obligations according to the agreement between the involved parties or the provisions of this Law.
13. Substantial breach means a contractual breach by a party, which causes damage to the other party to an extent that the other party cannot achieve the purpose of the entry into the contract.

14. Origin of goods means a country or a territory where all the goods are turned out or where the last stage of substantial processing of goods is performed in cases where many countries or territories join in the process of producing such goods.

15. Forms of validity equivalent to documents include telegraph, telex, facsimile, data message and other forms provided for by law.

#### **Article 4.- Application of the Commercial Law and relevant laws**

1. Commercial activities must comply with the Commercial Law and relevant laws.
2. Particular commercial activities provided for in other laws shall comply with the provisions of such laws.
3. Commercial activities which are not provided for in the Commercial Law and other laws shall comply with the provisions of the Civil Code.

#### **Article 5.- Application of treaties, foreign laws and international commercial practices**

1. Where a treaty to which Vietnam is a contracting party stipulates the application of foreign laws or international commercial practices, or contain provisions different from those of this Law, the provisions of such treaty shall apply.
2. Parties to commercial transactions involving foreign elements may agree to apply foreign laws or international commercial practices if such foreign laws or international commercial practices are not contrary to the fundamental principles of the Vietnamese law.

#### **Article 6.- Traders**

1. Traders include lawfully established economic organizations and individuals that conduct commercial activities in an independent and regular manner and have business registrations.
2. Traders are entitled to conduct commercial activities in occupations and sectors, in geographical areas, in forms and by modes which are not banned by law.
3. The right of traders to conduct lawful commercial activities is protected by the State.
4. The State exercises for a definite time its monopoly over commercial activities in respect to a number of goods and services or in a number of geographical areas in order to ensure the national interests. The Government shall specify the lists of goods, services and geographical areas subject to the State monopoly.

#### **Article 7.- Obligation of traders to register business**

Traders are obliged to register their business according to the provisions of law. Where traders have not yet registered their business, they are still held responsible for all of their activities according to the provisions of this Law and other provisions of law.

#### **Article 8.- Agencies in charge of state management over commercial activities**

1. The Government performs the unified state management over commercial activities.
2. The Trade Ministry is answerable to the Government for performing the state management over activities of goods sale and purchase and specific commercial activities provided for in this Law.
3. Ministries and ministerial-level agencies shall, within the scope of their respective tasks and powers, have to perform the state management over commercial activities in their assigned domains.
4. People's Committees at all levels perform the state management over commercial activities in their respective localities according to the decentralization by the Government.

#### **Article 9.- Commercial associations**

1. Commercial associations are established to protect the legitimate rights and interests of traders, mobilize traders to take part in commercial development, and disseminate and propagate the provisions of law on commerce.

2. Commercial associations are organized and operate according to the provisions of law on associations.

## **Section 2. FUNDAMENTAL PRINCIPLES IN COMMERCIAL ACTIVITIES**

### **Article 10.- Principle of traders' equality before law in commercial activities**

Traders of all economic sectors are equal before law in commercial activities.

### **Article 11.- Principle of freedom and freewill to agreement in commercial activities**

1. Parties have the rights of freedom to reach agreements not in contravention of the provisions of law, fine traditions and customs and social ethics in order to establish their rights and obligations in commercial activities. The State respects and protects such rights.

2. In commercial activities, the parties shall act on their own freewill, and neither party is allowed to impose its own will on, to force, intimidate or obstruct, the other party.

### **Article 12.- Principle of application of customs in commercial activities pre-established between parties**

Except otherwise agreed, the parties shall be regarded as automatically applying customs in commercial activities pre-established between them which they have already known or ought to know, provided that such customs are not contrary to the provisions of law.

### **Article 13.- Principle of application of practices in commercial activities**

Where it is neither provided for by law nor agreed by the parties, and there exist no customs pre-established between them, commercial practices shall be applied provided that such practices are not contrary to the principles provided for in this Law and the Civil Code

### **Article 14.- Principle of protection of legitimate interests of consumers**

1. Traders conducting commercial activities are obliged to provide consumers with sufficient and truthful information on goods and/or services they trade in or provide and take responsibility for the accuracy of such information.

2. Traders conducting commercial activities must be responsible for the quality and lawfulness of goods and/or services they trade in or provide.

### **Article 15.- Principle of recognition of legal validity of data messages in commercial activities**

In commercial activities, data messages which satisfy all technical conditions and standards provided for by law shall be recognized legally valid as documents.

## **Section 3. FOREIGN TRADERS CONDUCTING COMMERCIAL ACTIVITIES IN VIETNAM**

### **Article 16.- Foreign traders conducting commercial activities in Vietnam**

1. Foreign traders mean traders established and making their business registrations according to the provisions of foreign laws or recognized by foreign laws.

2. Foreign traders are entitled to set up their representative offices or branches in Vietnam; to establish in Vietnam foreign-invested enterprises in the forms provided for by Vietnamese law.

3. Vietnam-based representative offices and branches of foreign traders have the rights and obligations specified by Vietnamese law. Foreign traders shall be held responsible before Vietnamese law for all activities of their Vietnam-based representative offices and branches.

4. Foreign-invested enterprises established in Vietnam by foreign traders according to the provisions of Vietnamese law or international treaties to which the Socialist Republic of Vietnam is a contracting party shall be regarded as Vietnamese traders.

### **Article 17.- Rights of representative offices**

1. To operate for the purposes, within the scope and duration stipulated in their establishment licenses.

2. To rent offices, rent and purchase equipment and facilities necessary for their operations.
3. To recruit Vietnamese and expatriate employees to work for them according to the provisions of Vietnamese law.
4. To open accounts in foreign currencies or foreign currency-based Vietnam dong at banks licensed to operate in Vietnam, and to be allowed to use those accounts solely for their operations.
5. To have seals bearing their names according to the provisions of Vietnamese law.
6. To have other rights as defined by law.

**Article 18.- Obligations of representative offices**

1. Not to directly conduct profit-generating activities in Vietnam.
2. To conduct commercial promotion activities within the scope permitted by this Law.
3. Not to enter into contracts, not to amend or supplement contracts already entered into by foreign traders, except where chief representatives obtain valid letters of authorization from foreign traders or other cases specified in Clauses 2, 3 and 4, Article 17 of this Law.
4. To pay taxes, fees and charges, and fulfil other financial obligations provided for by Vietnamese law.
5. To report on their operations according to Vietnamese law.
6. To have other obligations as defined by Vietnamese law.

**Article 19.- Rights of branches**

1. To rent offices, rent and purchase equipment and facilities necessary for their operations.
2. To recruit Vietnamese and expatriate employees to work for them according to Vietnamese law.
3. To enter into contracts in Vietnam in compliance with their operation contents specified in their establishment licenses and the provisions of this Law.
4. To open Vietnam dong accounts and foreign-currency accounts at banks licensed to operate in Vietnam.
5. To transfer profits overseas according to the provisions of Vietnamese law.
6. To have seals bearing their own names according to the provisions of Vietnamese law.
7. To conduct activities of goods purchase and sale and other commercial activities in compliance with their establishment licenses according to the provisions of Vietnamese law and treaties to which the Socialist Republic of Vietnam is a contracting party.
8. To have other rights provided for by law.

**Article 20.- Obligations of branches**

1. To observe the accounting regime provided for by Vietnamese law; in cases where it is necessary to apply another commonly used accounting system, the approval by the Finance Ministry of the Socialist Republic of Vietnam is required.
2. To report on their operations according to the provisions of Vietnamese law.
3. To have other obligations provided for by law.

**Article 21.- Rights and obligations of foreign-invested enterprises**

Rights and obligations of foreign invested enterprises shall be determined according to the provisions of Vietnamese law or treaties to which the Socialist Republic of Vietnam is a contracting party.

**Article 22.- Competence to license foreign traders to conduct commercial activities in Vietnam**

1. The Government shall uniformly manage the licensing of commercial activities of foreign traders in Vietnam.

2. The Planning and Investment Ministry shall be answerable to the Government for managing the issuance of licences to foreign traders investing in Vietnam according to the provisions of Vietnamese law.

3. The Trade Ministry shall be answerable to the Government for managing the issuance of licences to set up Vietnam-based representative offices of foreign traders; or licenses to set up branches, joint-venture enterprises or enterprises with 100% foreign capital in Vietnam in cases where such traders are specialized in conducting activities of goods purchase and sale or other activities directly related to goods purchase and sale in compliance with Vietnamese law and treaties to which the Socialist Republic of Vietnam is a contracting party.

4. Where a specialized law contains specific provisions on the competence of ministries or ministerial-level agencies, which are responsible before the Government for managing the issuance of licences to foreign traders for conducting commercial activities in Vietnam, the provisions of such specialized law shall apply.

#### **Article 23.- Termination of operations in Vietnam of foreign traders**

1. Foreign traders shall terminate their operations in Vietnam in the following cases:

a/ Upon expiration of the operation duration stipulated in their licenses;

b/ At the request of traders, which is approved by competent state management agencies;

c/ Under decisions of competent state management agencies as a sanction against their violations of law and their licenses;

d/ Where traders are declared bankrupt;

e/ Where foreign traders terminate their operations according to foreign laws, for representative offices, branches or foreign parties to business cooperation contracts with Vietnamese parties;

f/ Other cases provided for by law.

2. Before terminating their operations in Vietnam, foreign traders are obliged to pay debts and fulfill other obligations toward the State, concerned organizations and individuals in Vietnam.

## **CHAPTER II: PURCHASE AND SALE OF GOODS**

### **Section 1: GENERAL PROVISIONS ON ACTIVITIES OF PURCHASE AND SALE OF GOODS**

#### **Article 24.- Form of contracts for purchase and sale of goods**

1. Contracts for sale and purchase of goods may be expressed in verbal or written form or established by specific acts.

2. For types of contracts for purchase and sale of goods, which, as provided for by law, must be made in writing, such provisions must be complied with.

#### **Article 25.- Goods banned from business, goods subject to business restrictions and goods subject to conditional business**

1. On the basis of socio-economic conditions of each period and international treaties to which the Socialist Republic of Vietnam is a contracting party, the Government shall specify the lists of goods banned from business, goods subject to business restrictions, and goods subject to conditional business and the conditions for trading in such goods.

2. For goods subject to business restrictions and goods subject to conditional business, the purchase and sale thereof shall be effected only when goods and the goods purchasing and selling parties fully meet the conditions provided for by law.

#### **Article 26.- Application of urgent measures with respect to domestically circulated goods**

1. Goods legally and domestically circulated may be subject to the application of one or all of such measures as compulsory withdrawal from circulation, circulation ban, circulation suspension, conditional circulation, or compulsory circulation permission in the following cases:

a/ Where such goods constitute sources or transmitters of various epidemics and diseases;

b/ Where an emergency circumstance occurs.

2. Specific conditions, order, procedures and competence for announcing the application of urgent measures to domestically circulated goods shall comply with the provisions of law.

#### **Article 27.- International purchase and sale of goods**

1. International purchase and sale of goods shall be conducted in form of export, import, temporary import for re-export, temporary export for re-import and transfer through border-gates.

2. International purchase and sale of goods shall be conducted on the basis of written contracts or other forms of equal legal validity.

#### **Article 28.- Export and import of goods**

1. Export of goods means the bringing of goods out of the territory of the Socialist Republic of Vietnam or into special zones in the Vietnamese territory, which are regarded as exclusive customs zones according to the provisions of law.

2. Import of goods means the bringing of goods into the territory of the Socialist Republic of Vietnam from foreign countries or special zones in the Vietnamese territory, which are regarded as exclusive customs zones according to the provisions of law.

3. On the basis of socio-economic conditions in each period and treaties to which the Socialist Republic of Vietnam is a contracting party, the Government shall specify the lists of goods banned from import and/or export, goods to be imported or exported under permits of competent state management agencies, and the procedures for granting permits.

#### **Article 29.- Temporary import for re-export and temporary export for re-import of goods**

1. Temporary import of goods for re-export means the bringing of goods into Vietnam from foreign countries or special zones locating in the Vietnamese territory, which are regarded as exclusive customs zones according to the provisions of law, with the completion of the procedures for importing such goods into Vietnam, then procedures for exporting the same goods out of Vietnam.

2. Temporary export of goods for re-import means the bringing of goods overseas or into special zones in the Vietnamese territory which are regarded as exclusive customs zones according to the provisions of law, with the completion of procedures for exporting such goods out of Vietnam, then procedures for importing the same goods back into Vietnam.

3. The Government shall specify activities of temporary import for re-export and temporary export for re-import of goods.

#### **Article 30.- Transfer of goods through border-gates**

1. Transfer of goods through border-gates means the purchase of goods from a country or territory for sale to another country or territory outside the Vietnamese territory without carrying out the procedures for importing such goods into Vietnam and the procedures for exporting such goods out of Vietnam.

2. Transfer of goods through border-gates shall be conducted in the following forms:

a/ Goods are transported directly from the exporting country to the importing country without going through Vietnamese border-gates;

b/ Goods are transported from the exporting country to the importing country through Vietnamese border-gates without carrying out the procedures for importing them into Vietnam and

the procedures for exporting them out of Vietnam; c/ Goods are transported from the exporting country to the importing country through Vietnamese border-gates and brought into bonded warehouses or areas for transshipment of goods at Vietnamese ports without carrying out the procedures for importing them into Vietnam and the procedures for exporting them out of Vietnam.

3. The Government shall provide in detail activities of transfer of goods through border-gates.

#### **Article 31.- Application of urgent measures to activities of international purchase and sale of goods**

Where it is necessary to protect the national security or other national interests in compliance with Vietnamese law and treaties to which the Socialist Republic of Vietnam is a contracting party, the Prime Minister shall decide on the application of urgent measures to activities of international purchase and sale of goods.

#### **Article 32.- Labels for domestically circulated, exported and imported goods**

1. Goods labels mean writings, prints, drawings or photos of texts, pictures or images, which are stuck, printed, affixed, molded, carved or engraved directly on goods or their commercial packing or other materials which are attached to the goods or their packing.

2. All goods that are domestically circulated, imported and exported must have their labels, except for some cases specified by law.

3. Contents which must be inscribed in goods labels and the labeling of goods shall comply with regulations of the Government.

#### **Article 33.- Certificates of origin of goods and rules of origin of goods**

1. Export goods and import goods must have certificates of origin in the following cases:

a/ Goods are eligible for tax or other preferences;

b/ It is so provided for by Vietnamese laws or treaties to which the Socialist Republic of Vietnam is a contracting party.

2. The Government shall provide in detail for the rules of origin for exports and imports.

### **Section 2. RIGHTS AND OBLIGATIONS OF PARTIES TO CONTRACTS FOR PURCHASE AND SALE OF GOODS**

#### **Article 34.- Delivery of goods and goods-related documents**

1. The seller must deliver goods and relevant documents, as agreed in contracts on quantity, quality, packing and preservation modes and other contractual terms.

2. In cases where there is no specific agreement, the seller is obliged to deliver goods and relevant documents according to the provisions of this Law.

#### **Article 35.- Place of delivery of goods**

1. The seller is obliged to deliver goods at the agreed place.

2. In cases where there is no agreement on place of goods delivery, such a place shall be specified as follows:

a/ In cases where goods are things attached to land, the seller must deliver goods at the place where such goods exist;

b/ In cases where the contract contains a provision on goods transportation, the seller is obliged to deliver goods to the first carrier;

c/ In cases where the contract contains no provision on goods transportation, and at the time the contract is entered into, the parties know the location of the goods storage, the place of goods loading or the place of goods manufacture, the seller shall have to deliver the goods at such place;



61 In other cases, the seller shall have to deliver goods at his/her place of business, or his/her place of residence identified at the time the purchase and sale contract is entered into in cases he/she has no place of business.

#### **Article 36.- Responsibilities upon delivery of goods where carriers are involved**

1. Where goods are handed over to the carrier without being identified with specific signs or marks on them, accompanied with transportation documents or otherwise, the seller must notify the purchaser of the handover of goods to the carrier and clearly identify names and method of recognizing transported goods.
2. Where the seller is obliged to arrange the goods transportation, the seller shall have to enter into necessary contracts for the transportation of goods to the destination by means of transportation suitable to specific circumstances and under normal conditions for such modes of transportation.
3. Where the seller is not obliged to purchase insurance for the goods in the course of transportation and if requested by the purchaser, the seller must supply to the purchaser all necessary information on the goods and the transportation thereof to enable the purchaser to purchase insurance for the goods.

#### **Article 37.- Time limit for delivery of goods**

1. The seller must deliver goods at the time already agreed upon in the contract;
2. Where only the time limit for delivery of goods is agreed upon without a specific time for delivery of goods, the seller may deliver goods at any time within such time limit and must notify the purchaser of the delivery in advance;
3. Where there is no agreement on the time limit for delivery of goods, the seller must deliver goods within a reasonable time limit after the contract is entered into.

#### **Article 38.- Delivery of goods before the agreed time**

Where the seller delivers goods earlier than the agreed time, the purchaser may receive or reject the goods, unless otherwise agreed upon by the parties.

#### **Article 39.- Goods which are not appropriate to contracts**

1. Where it is not specified in the contract, goods shall be considered not appropriate to the contract when they fall into one of the following cases:
  - a/ They are not suitable to common use purposes of goods of the same type;
  - b/ They are not suitable to any specific purpose that has been notified by the purchaser to the seller or the seller should have known at the time the contract is entered into;
  - c/ Their quality is not the same as the quality of the samples previously handed over by the seller to the purchaser;
  - d/ They are not preserved or packaged by a method common to such goods, or not preserved by proper preserving methods in cases where no common preserving method is available.
2. The purchaser may reject the goods if such goods are not appropriate to the contract according to the provisions of Clause 1 of this Article.

#### **Article 40.- Liability for goods which are not appropriate to contracts**

Unless otherwise agreed upon by the parties, the liability for goods which are not appropriate to contracts is provided for as follows:

1. The seller shall not be liable for any defect of the goods if the purchaser, at the time the contract is entered into, knew or should have known such defect;
2. Except for the case specified in Clause 1 of this Article, within the time limit for lodging complaint provided for in this Law, the seller shall be liable for any defect of the goods which already exists before

the time of passing the risk to the purchaser despite the fact that such defect may be discovered after passing the risks.

3. The seller shall be liable for defects of goods occurring after the pass of risks if such defects are attributable to contract breaches by the seller.

#### **Article 41.- Remedies in case of delivery of goods in insufficient quantity or delivery of goods not appropriate to contracts**

1. Unless otherwise agreed, and where the contract only provides for a time limit for delivery of goods and does not determine a specific time for delivery of goods, and the seller delivers goods before the expiration of such time limit but in insufficient quantity or goods not appropriate to the contract, the seller may still deliver the deficit quantity of goods or provide substitute goods which are appropriate to the contract or remedy the inappropriateness of the goods within the remaining duration.

2. Where the seller, when applying the remedies provided for in Clause 1 of this Article, causes disadvantages or unreasonable costs to the purchaser, the purchaser shall have the right to request the seller to deal with such disadvantages or bear such costs.

#### **Article 42.- Delivery of goods-related documents**

1. Where there is an agreement on the delivery of documents, the seller is obliged to deliver all goods-related documents to the purchaser within the time limit, at the place and by mode already agreed.

2. Where there is no agreement on the time limit and place for delivery of goods-related documents to the purchaser, the seller must deliver such documents to the purchaser within a reasonable time limit and at a convenient place so that the purchaser can receive the goods.

3. Where the seller has delivered goods-related documents before the agreed time, the seller can still rectify errors of such documents within the remaining duration of the time limit.

4. When the seller, when rectifying errors mentioned in Clause 3 of this Article, causes disadvantages or unreasonable costs to the purchaser, the purchaser shall have the right to request the seller to deal with such disadvantages or bear such costs.

#### **Article 43.- Delivery of goods in excessive quantity**

1. Where the seller delivers goods in excessive quantity, the purchaser may reject or accept such excessive quantity of goods.

2. Where the purchaser accepts the excessive quantity of goods, the purchaser must pay for that quantity at the price agreed in the contract unless otherwise agreed upon by the parties.

#### **Article 44.- Pre-delivery examination of goods**

1. Where it is agreed by the parties that the purchaser or the purchaser's representative shall examine the goods before the delivery, the seller must ensure that the purchaser or the purchaser's representative shall be given conditions for conducting such examination.

2. Except where it is otherwise agreed, the purchaser or the purchaser's representative in the cases mentioned in Clause 1 of this Article must examine the goods within the shortest period of time allowed by practical circumstances. Where the contract provides for the transportation of goods, the examination of goods may be postponed until the goods are transported to the destination.

3. Where the purchaser or the purchaser's representative does not conduct the examination of goods before the delivery of goods as agreed, the seller may deliver the goods according to the contract.

4. The seller shall not be liable for defects of goods which the purchaser or the purchaser's representative has known or should have known but failed to notify them to the seller within a reasonable time limit after the examination of goods.

5. The seller shall be liable for defects of goods already examined by the purchaser or the purchaser's representative if the defects of the goods cannot be detected in the course of examination through

common measures and the seller knew or should have known such defects but failed to notify them to the purchaser.

#### **Article 45.- Obligation to assure the ownership right over goods**

The seller must assure that:

1. The ownership right of the purchaser over goods sold is not disputed by any third party;
2. The goods are lawful;
3. The handover of the goods is lawful.

#### **Article 46.- Obligation to assure intellectual property rights over goods**

1. The seller must not sell goods infringing upon intellectual property rights. The seller shall be held responsible for any dispute related intellectual property rights over goods sold.

2. Where the purchaser requests the seller to observe technical drawings, designs, formulas or specifications furnished by the purchaser, the

purchaser shall be liable for complaints related to infringements of intellectual property rights which arise from the fact that the seller has complied with the request of the purchaser.

#### **Article 47.- Notification requirements**

1. The seller shall lose the right to invoke the provisions of Clause 2, Article 46 of this Law when failing to promptly notify the purchaser of a third party's complaint about the delivered goods after the seller knew or should have known such complaint, except for cases where the purchaser knew or should have known a third party's complaint.

2. The purchaser shall lose the right to invoke the provisions of Article 45 and Clause 1, Article 46 of this Law when failing to promptly notify the seller of a third party's complaint about the delivered goods after the purchaser knew or should have known such complaint, except for cases where the purchaser knew or should have known a third party's complaint.

#### **Article 48.- Obligation of the seller in cases where goods are subject to measures of security for performance of civil obligations**

Where the goods sold are subject to measures of security for performance of civil obligations, the seller must notify the purchaser of such security measures and must obtain the consent of the security beneficiary regarding the sale of such goods.

#### **Article 49.- Obligation to provide warranty for goods**

1. Where goods are purchased and sold under warranty, the seller shall have to provide warranty for such goods according to the agreed contents and duration.

2. The seller must fulfill the warranty obligation as soon as the practical situation permits.

3. The seller must bear all warranty expenses unless otherwise agreed.

#### **Article 50.- Payment**

1. The purchaser is obliged to pay for goods and receive goods as agreed upon.

2. The purchaser must comply with the payment modes and make the payment according to the agreed order and procedures and the provisions of law.

3. The purchaser shall still have to pay for goods in cases where goods are lost or damaged after the time the risk is passed from the seller to the purchaser, except for cases where the loss or damage is caused due to the fault of the seller.

#### **Article 51 .-Suspension of payment for goods**

Unless otherwise agreed, the suspension of payment for goods is provided for as follows:

1. The purchaser that has proofs of deceit of the seller shall have the right to suspend the payment.

2. The purchaser that has proofs that the goods are subject to a dispute shall have the right to suspend the payment until the said dispute is settled.

3. The purchaser that has proofs that the seller has delivered goods which do not conform with the contract shall have the right to suspend the payment until the seller remedy such inconformity.

4. If the proofs produced by the purchaser for the cases of payment suspension mentioned in Clauses 2 and 3 of this Article are unfounded, thus causing damage to the seller, the purchaser must pay compensations for such damage and be subject to other penalties provided for in this Law.

#### **Article 52.- Determination of prices**

Where there is neither agreement on goods price or on the price-determining method nor other price indexes, the goods price shall be determined according to the price of such type of goods under similar conditions on mode of goods delivery, time of goods purchase and sale, geographical market, payment mode and other conditions which affect the prices.

#### **Article 53.- Pricing by weight**

Unless otherwise agreed, if the goods price is determined according to the weight of the goods, such weight must be net weight.

#### **Article 54.- Place of payment**

Where there is no agreement on specific place of payment, the purchaser must pay to the seller at one of the following places:

1. The seller's place of business, which is identified at the time of entering into the contract; or the seller's place of residence where the seller has no place of business.

2. The place where the goods or documents are delivered, if the payment is made concurrently with the delivery of goods or documents.

#### **Article 55.- Time limit for payment**

Unless otherwise agreed, the time limit for payment is provided for as follows:

1. The purchaser must make payment to the seller at the time the seller delivers the goods or the goods-related documents.

2. The purchaser is not obliged to make payment until the goods examination can be completed in cases where an agreement is reached according to the provisions of Article 44 of this Law.

#### **Article 56.- Receipt of goods**

The purchaser is obliged to receive the goods as agreed upon and do appropriate things to help the seller deliver the goods.

#### **Article 57.- Pass of risks in cases where there is a fixed place of delivery of goods**

Unless otherwise agreed, if the seller is obliged to deliver the goods to the purchaser at a particular place, the risk of goods loss or damage shall be passed to the purchaser as soon as the goods are delivered to the purchaser or the person authorized by the purchaser to receive the goods at such place, even in cases where the seller is authorized to retain the documents which establish the ownership rights over the goods.

#### **Article 58.- Pass of risks in cases where there is no fixed place of delivery of goods**

Unless otherwise agreed, if the contract contains provisions on the goods transportation and the seller is not obliged to deliver the goods at a given place, the risk of goods loss or damage shall be passed to the purchaser as soon as the goods are delivered to the first carrier.

#### **Article 59.- Pass of risks in cases where goods are handed over to a bailee that is not a carrier**

Unless otherwise agreed, if the goods are being kept by a bailee that is not a carrier, the risks of goods loss or damage shall be passed to the purchaser in one of the following cases:

1. Upon receipt by the purchaser of documents of title to the goods;
2. Upon the confirmation by the bailee of the purchaser's right to possession of the goods.

#### **Article 60.- Pass of risks in case of purchase and sale of goods in transportation**

Unless otherwise agreed, if the subject matter of the contract is goods in transportation, the risk of goods loss or damage shall be passed to the purchaser as from the time the contract is entered into.

#### **Article 61.- Pass of risks in other cases**

Unless otherwise agreed, the pass of risks in other cases is provided for as follows:

1. For cases not specified in Articles 57, 58, 59 and 60 of this Law, the risk of goods loss or damage is to be passed to the purchaser as from the time the goods fall under the purchaser's right of disposal and the purchaser breaches the contract by rejecting the goods.
2. Risk of goods loss or damage is not to be passed to the purchaser if the goods are neither clearly identified by their signs, codes or bills of transportation, nor notified to the purchaser, nor identified by any means.

#### **Article 62.- Time of transferring ownership of goods**

Unless otherwise provided for by law or agreed upon by the parties, ownership of goods shall be passed from the seller to the purchaser as from the time of handover of the goods.

### **Section 3. PURCHASE AND SALE OF GOODS THROUGH THE GOODS EXCHANGE**

#### **Article 63.- Purchase and sale of goods through the Goods Exchange**

1. Purchase and sale of goods through the Goods Exchange mean commercial activities whereby the parties agree to purchase and sell a defined quantity of goods of a defined type through the Goods Exchange under the standards of the Goods Exchange, at a price agreed upon at the time the contract is entered into, and with the time of goods delivery determined to be a specific point of time in the future.
2. The Government shall specify activities of purchase and sale of goods through the Goods Exchange.

#### **Article 64.- Contracts for purchase and sale of goods through the Goods Exchange**

1. Contracts for purchase and sale of goods through the Goods Exchange include forward contracts and option contracts.
2. Forward contract means an agreement whereby the seller undertakes to deliver and the purchaser undertakes to receive the goods at a specific point of time in the future under the contract.
3. Call option or put option contract means an agreement whereby the purchaser has the right to purchase or sell a specific goods at a pre-fixed price level (hereinafter called executed price) and must pay a certain sum of money to buy this right (hereinafter called option money). The option purchaser may opt to effect or not to effect such purchase or sale of goods.

#### **Article 65.- Rights and obligations of parties to forward contracts**

1. Where the seller delivers the goods under the contract, the purchaser is obliged to receive the goods and pay for them.
2. Where the parties agree that the purchaser may make cash payment and reject the goods, the purchaser shall have to pay to the seller a sum of money equal to the difference between the price agreed upon in the contract and the market price announced by the Goods Exchange at the time the contract is performed.
3. Where the parties agree that the purchaser may make cash payment and refuse to deliver the goods, the seller shall have to pay to the purchaser a sum of money equal to the difference between the market price announced by the Goods Exchange at the time the contract is performed and the price agreed upon in the contract.

#### **Article 66.- Rights and obligations of parties to option contracts**

1. The call option or put option purchaser shall have to pay for option purchase in order to become call option or put option holder. The sum of money to be paid for option purchase shall be agreed upon by the parties.
2. The call option holder has the right to purchase but is not obliged to purchase goods ascertained in the contract. Where the call option holder decides to perform the contract, the seller shall be obliged to sell goods to the call option holder. The seller that has no goods to deliver shall have to pay to the call option holder a sum of money equal to the difference between the price agreed upon in the contract and the market price announced by the Goods Exchange at the time the contract is performed.
3. The put option holder has the right to sell but is not obliged to sell goods ascertained in the contract. Where the put option holder decides to perform the contract, the purchaser shall be obliged to purchase goods from the put option holder. Where the purchaser does not purchase goods, it shall have to pay to the put option holder a sum of money equal to the difference between the market price announced by the Goods Exchange at the time the contract is performed and the price agreed upon in the contract.
4. Where the call option or put option holder decides not to perform the contract within the valid duration of the contract, the contract shall automatically be invalidated.

#### **Article 67.- The Goods Exchange**

1. The Goods Exchange has the following functions:
  - a/ Providing the material - technical conditions necessary for transactions of purchasing or selling goods;
  - b/ Running trading operations;
  - c/ Listing specific prices formed at the Goods Exchange at each specific time.
2. The Government shall specify the conditions for the establishment of the Goods Exchange, the powers and tasks of the Goods Exchange, and the approval of the operation charter of the Goods Exchange.

#### **Article 68.- Goods traded at the Goods Exchange**

The list of goods traded at the Goods Exchange shall be promulgated by the Trade Minister.

#### **Article 69.- Brokers for purchase and sale of goods through the Goods Exchange**

1. Brokers for purchase and sale of goods through the Goods Exchange shall be allowed to operate at the Goods Exchange only when they fully satisfy the conditions provided for by law. The Government shall specify the conditions for operation of brokers for the purchase and sale of goods through the Goods Exchange.
2. Brokers for purchase and sale of goods through the Goods Exchange shall be allowed to conduct only activities of brokerage for purchase and sale of goods through the Goods Exchange and must not be a party to a contract for purchase and sale of goods through the Goods Exchange.
3. Brokers for purchase and sale of goods through the Goods Exchange shall be obliged to deposit money at the Goods Exchange to secure the performance of their obligations arising in the course of goods purchase and sale brokerage activities. The deposit level shall be set by the Goods Exchange.

#### **Article 70.- Prohibited acts of brokers for purchase and sale of goods through the Goods Exchange**

1. Enticing customers to enter into contracts by promising to compensate the whole or part of loss incurred or to guarantee profits for them.
2. Offering or conducting brokerage for goods without entering into contracts with customers.
3. Using sham prices or other fraudulent measures in the course of brokerage.

4. Refusing or unreasonably delaying the brokerage for contracts in accordance with contents agreed upon with customers.
5. Other prohibited acts specified in Clause 2, Article 71 of this Law.

**Article 71.- Prohibited acts in activities of purchase and sale of goods through the Goods Exchange**

1. Staff members of the Goods Exchange shall not be allowed to conduct the brokerage for, purchase or sale of goods through the Goods Exchange.
2. Parties involved in the purchase and sale of goods through the Goods Exchange must not conduct the following acts:
  - a/ Committing fraudulences or deceits about volumes of goods in forward or option contracts which are transacted or may be transacted, and fraudulences and deceits about real prices of goods in forward or option contracts;
  - b/ Supplying false information on transactions, the market or prices of goods purchased or sold through the Goods Exchange;
  - c/ Applying illegal measures to cause disorder of the goods market at the Goods Exchange;
  - d/ Committing other prohibited acts provided for by law.

**Article 72.- Application of management measures in emergency cases**

1. Emergency cases mean circumstances where the disorder of the goods market occurs, making transactions through the Goods Exchange unable to accurately reflect the goods supply and demand relation.
2. In emergency cases, the Trade Minister shall be entitled to apply the following measures:
  - a/ Temporarily suspending transactions through the Goods Exchange;
  - b/ Limiting transactions within a price bracket or a specific quantity of goods;
  - c/ Changing the schedule of transactions;
  - d/ Adjusting the operation charter of the Goods Exchange;
  - e/ Other necessary measures as provided for by the Government.

**Article 73.- Right to conduct the purchase and sale of goods through overseas Goods Exchanges**

Vietnamese traders are entitled to conduct purchase and sale of goods through overseas Goods Exchanges according to regulations of the Government.

## **CHAPTER III: PROVISION OF SERVICES**

### **Section 1. GENERAL PROVISIONS ON ACTIVITIES OF PROVISION OF SERVICES**

**Article 74.- Forms of service contracts**

1. A service contract shall be expressed in verbal or written form or established with specific acts.
2. For those types of service contract which are required by law to be made in writing, such requirement must be abided by.

**Article 75.- Rights of traders to provide and use services ,**

1. Unless otherwise provided for by law or treaties to which the Socialist Republic of Vietnam is a contracting party, traders shall have the following rights to provide services:

- a/ To provide services to residents in Vietnam for use in the Vietnamese territory;
- b/ To provide services to non-residents in Vietnam for use in the Vietnamese territory;
- c/ To provide services to residents in Vietnam for use in foreign territories;
- d/ To provide services to non-residents in Vietnam for use in foreign territories.

2. Unless otherwise provided for by law or treaties to which the Socialist Republic of Vietnam is a contracting party, traders shall have the following rights to use services:

- a/ To use services provided in the Vietnamese territory by residents in Vietnam;
- b/ To use services provided in the Vietnamese territory by non-residents in Vietnam;
- c/ To use services provided in foreign territories by residents in Vietnam;
- d/ To use services provided in foreign territories

by non-residents in Vietnam.

3. The Government shall specify the residents and non-residents that are subject to the implementation of tax and import-export management policies toward various types of services.

#### **Article 76.- Services banned from business, services subject to business restrictions and services subject to conditional business**

1. On the basis of socio-economic conditions in each period and treaties to which the Socialist Republic of Vietnam is a contracting party, the Government shall specify the lists of services banned from business, services subject to business restrictions and services subject to conditional business as well as the conditions for providing such services.

2. Services subject to business restrictions and services subject to conditional business shall be provided only when these services and parties involved in the provision thereof fully satisfy the conditions defined by law.

#### **Article 77.- Application of urgent measures to activities of providing or using services**

Where it is necessary to protect the national security and other national interests in compliance with the Vietnamese law and treaties to which the Socialist Republic of Vietnam is a contracting party, the Prime Minister shall decide on application of urgent measures to activities of providing or using services, including temporary ban on the provision or use of one or several types of service or other urgent measures to one or several particular markets for a definite time period.

### **Section 2. RIGHTS AND OBLIGATIONS OF PARTIES TO SERVICE CONTRACTS**

#### **Article 78.- Obligations of the service providers**

Unless otherwise agreed, the service provider shall have the following obligations:

- 1. To provide services and fully perform related jobs in accordance with agreements and the provisions of this Law;
- 2. To preserve and hand back to their customers documents and means supplied to them for the service provision after the completion thereof;
- 3. To promptly notify to their customers in cases where information and documents are insufficient and means are inadequate for completion of the service provision;
- 4. To keep secret information they know in the course of service provision if so agreed upon by the parties or provided for by law.

#### **Article 79.- Obligations of the service providers according to performance result**

Unless otherwise agreed, if the nature of the type of service to be provided requires a service provider to achieve a certain result, the service provider must conduct the service provision with a result appropriate with the terms and purpose of the contract. Where the contract does not specify the standards of result to



be achieved, the service provider must conduct the service provision with a result compliant with the common standards applicable to such type of service.

#### **Article 80.- Obligations of the service providers to make the best effort**

Unless otherwise agreed, if the nature of the type of service to be provided requires a service provider to make the best effort to achieve a desired result, the service provider shall perform the obligation of service provision with the best effort and the highest capacity.

#### **Article 81.- Cooperation among service providers**

Where under a contractual agreement or on the basis of practical circumstances, a service is jointly performed by many service providers or performed by a service provider in cooperation with other service providers, each of the said service providers shall have the following obligations:

1. To exchange and communicate to each other information on the performance progress and its demands related to the service provision, at the same time to provide services at a proper time and by an appropriate mode so as not to impede operations of other service providers;
2. To carry out any necessary cooperation with other service providers.

#### **Article 82.- Time limit for completion of services**

1. Service providers must complete their services within the time limits already agreed upon in contracts.
2. Where there is no agreement on the time limits for completing services, service providers shall have to complete their services within a reasonable time limit on the basis of taking into account all conditions and circumstances which service providers knew at the time the contracts were entered into, including any specific needs of customers regarding such time limit for service completion.
3. Where a service can be completed only when the customer or another service provider satisfies certain conditions, the provider of such service is not obliged to complete his/her service until those conditions are satisfied.

#### **Article 83.- Customers' requests for changes during the provision of services**

1. During the provision of services, service providers must satisfy all reasonable requests of their customers for changes during the provision of services.
2. Unless otherwise agreed, customers must bear reasonable expenses for the satisfaction of their requests for changes.

#### **Article 84.- Continued provision of services after the expiration of the time limit for completing the provision of services**

If services, after the expiration of the time limit for completing the provision thereof, are not yet completed, and if customers have no objection, service providers shall have to continue providing the agreed services and compensate for damage, if any.

#### **Article 85.- Obligations of customers**

Unless otherwise agreed, customers shall have the following obligations:

1. To pay charges for provision of services as agreed upon in contracts;
2. To provide in a timely manner plans, instructions and other details so that the provision of services can be made without any delay or interruption;
3. To cooperate with service providers in all other matters necessary for the proper provision of services;
4. Where a service is performed jointly by many service providers or by a provider in coordination with other service providers, customers shall be obliged to coordinate operations of these service providers so as not to impede the work of any service provider.

#### **Article 86.- Service charge rate**

Where there is no agreement on service charge rate, no agreement on methods of determining service charge rate, and also there is not any indication to service charge rate, the service charge rate shall be determined according to the charge rate of the same type of service under similar conditions on mode of provision, time of provision, geographical market, mode of payment and other conditions which can affect the service charge rate.

#### **Article 87.- Time limit for payment**

Where there is no agreement and there exist no customs pre-established between the parties j concerning payment for services, the time limit for payment shall be the time when the provision c: services is completed.

## **CHAPTER IV: COMMERCIAL PROMOTION**

### **Section 1: SALE PROMOTION**

#### **Article 88.- Sale promotion**

1. Sale promotion means activities of commercial promotion conducted by traders to promote the purchase and sale of goods or the provision of services by offering certain benefits to customers.
2. Traders conducting sale promotion are those falling into one of the following cases:
  - a/ Traders directly conduct sale promotion for goods and/or services that they trade in;
  - b/ Traders engaged in providing sale promotion services conduct sale promotion for goods and/or services of other traders under an agreement with the latter.

#### **Article 89.- Provision of sale promotion service**

Provision of sale promotion services means commercial activities whereby a trader conducts sale promotion for goods and/or services of other traders on a contractual basis.

#### **Article 90.- Sale promotion service contracts**

Sale promotion service contracts must be made in writing or in other forms of equal legal validity.

#### **Article 91.- Rights of traders to conduct sale promotion**

1. Vietnamese traders, branches of Vietnamese traders, and Vietnam-based branches of foreign traders shall have the right to conduct sale promotion themselves or to hire traders engaged in provision of sale promotion services to do so.
2. Representative offices of traders shall not be allowed to conduct sale promotion themselves or to hire other traders to conduct sale promotion in Vietnam for the traders that they are representing.

#### **Article 92.- Forms of sale promotion**

1. Giving samples of goods or providing samples of services to customers for trial use free of charge.
2. Presenting goods as gifts or providing free-of-charge services to customers.
3. Selling goods or providing services at prices lower than goods sale prices or service provision charge rates previously applied during the period of sale promotion already registered or announced. In case of goods or services subject to the State management over their prices, the sale promotion in this form shall comply with regulations of the Government.
4. Selling goods or providing services together with coupons that allow customers to enjoy one or several benefits.
5. Selling goods or providing services together with prize-contest entrance tickets to customers, for purpose of selecting prize winners according to the rules and prizes already announced.

6. Selling goods or providing services together with opportunities for customers to participate in games of chance, the participation in which comes after the purchase of goods or services and the winning of prizes depends on the luck of participants according to the rules and prizes already announced.
7. Organizing programs for frequent customers whereby gifts are presented to customers on the basis of the quantities or values of goods purchased or services used by such customers and expressed in forms of customers' cards, coupons acknowledging the purchase of goods or services, or other forms.
8. Organizing cultural, artistic or entertainment programs or other events for customers for the purpose of sale promotion.
9. Other forms of sale promotion if approved by the State management agency in charge of commerce.

#### **Article 93.- Sale promotion goods and services**

1. Sale promotion goods and services mean goods and services used by traders to promote their sale and provision in various forms of sale promotion.
2. Sale promotion goods and services must be those traded lawfully.

#### **Article 94.- Goods and services used for sale promotion, sale promotion discount rates**

1. Goods and services used for sale promotion mean those given as gifts or prizes or provided free of charge by traders to customers.
2. Goods and services used by traders for sale promotion may be goods and services they are trading in or other goods and services.
3. Goods and services used for sale promotion must be those traded lawfully.
4. The Government shall specify the maximum value of goods and services used for sale promotion, and the maximum discount rate for sale promotion goods and services, which traders can apply in their sale promotion activities.

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#### **Article 95.- Rights of traders conducting sale promotion**

1. To choose the form, time and venue for sale promotion, goods and services to be used for sale promotion.
2. To define specific benefits which customers shall be entitled to enjoy according to Clause 4, Article 94 of this Law.
3. To hire traders engaged in the business of providing sale promotion services to conduct sale promotion for them.
4. To organize the application of the sale promotion forms specified in Article 92 of this Law.

#### **Article 96.- Obligations of traders conducting sale promotion**

1. To fully comply with the order and procedures provided for by law for conducting sale promotion in various forms.
2. To publicly notify all information on sale promotion activities to customers according to Article 97 of this Law.
3. To strictly adhere to the sale promotion program already announced, and to fulfill their commitments with customers.
4. With regard to the forms of sale promotion specified in Clause 6, Article 92 of this Law, traders must set aside and remit 50% of the value of the prizes already announced into the state budget in cases where there is no prize-winner.

The Trade Minister shall provide for specific forms of sale promotion under prize programs which must comply with this provision.

5. To comply with agreements in sale promotion service contracts if traders conducting sale promotion are those providing sale promotion services.

#### **Article 97.- Information that must be publicly notified**

1. For all forms of sale promotion specified in Article 92 of this Law, traders conducting sale promotion must publicly notify the following information:

a/ Names of sale promotion activities;

b/ Sale prices or charge rates of sale promotion goods or services and related costs for delivery of sale promotion goods or services to customers;

c/ Names, addresses and telephone numbers of traders conducting the sale promotion;

d/ Sale promotion duration, the starting date and ending date and area of sale promotion activities;

e/ Where benefits of the participation in sale promotion depend on specific conditions, notices must clearly state that such sale promotion activities are conditional and specific conditions.

2. Apart from the information defined in Clause 1 of this Article, traders shall also publicly notify the following sale promotion-related information:

a/ Sale prices of goods or charge rates of services given as gifts to customers, for the form of sale promotion mentioned in Clause 2, Article 92 of this Law;

b/ Absolute value or discount percentage of normal prices of goods, or normal charge rates of services before the sale promotion duration, for the form of sale promotion specified in Clause 3, Article 92 of this Law;

c/ Monetary values or specific benefits of coupons which customers are entitled to enjoy; places of sale of goods or provision of services as well as types of goods or services which customers may receive from coupons, for the form of sale promotion specified in Clause 4, Article 92 of this Law;

6/ Types of prize and value of each prize; rules for participation in sale promotion programs, method of selecting prize-winners, for the form of sale promotion specified in Clauses 5 and 6, Article 92 of this Law;

e/ Expenses which must be borne by customers, for the form of sale promotion specified in Clauses 7 and 8, Article 92 of this Law.

#### **Article 98.- Modes of notification**

1. The notification of sale promotion for goods according to the provisions of Article 97 of this Law shall be made by one of the following modes:

a/ At places where goods are sold and where goods are displayed for sale;

b/ On goods or their packing;

c/ In any other forms which must be attached to goods when such goods are sold.

2. The notification of sale promotion for services according to the provisions of Article 97 of this Law shall be made by one of the following modes:

a/ At places where services are provided;

b/ In any other forms which must be provided together with services when such services are provided.

#### **Article 99.- Keeping secret information on sale promotion programs and details**

Where sale promotion programs must be approved by competent state agencies, such agencies must keep secret the sale promotion programs and details provided by traders until such programs are approved by competent state agencies.

#### **Article 100.- Prohibited acts in sale promotion activities**

1. Conducting sale promotion for goods and services banned from business; goods and services subject to business restrictions; goods not yet permitted for circulation; and services not yet permitted for provision;
2. Using, for sale promotion purpose, goods and services which are banned from business; goods and services subject to business restrictions; goods not yet permitted for circulation; and services not yet permitted for provision;
3. Conducting sale promotion for alcohol and beer, or using alcohol and beer for sale promotion targeted at under-18 people;
4. Conducting sale promotion for, or using cigarette or alcohol of an alcoholic volume of 30° or higher for sale promotion in any form;
5. Conducting untruthful or misleading sale promotion for goods and services so as to deceive customers;
6. Conducting sale promotion for selling inferior-quality goods, causing harms to the environment, human health and other public interests;
7. Conducting sale promotion at schools, hospitals or offices of state agencies, political organizations, socio-political organizations and people's armed forces units;
8. Promising to present gifts or prizes but failing to do so or doing it improperly;
9. Conducting sale promotion for purpose of unfair competition;
10. Conducting sale promotion with the value of sale promotion goods and/or services exceeding the maximum limit or the maximum discount rate of sale promotion goods and services mentioned in Clause 4, Article 94 of this Law.

**Article 101.- Registration for sale promotion activities with, and notification of sale promotion results to, the State management agency in charge of commerce**

1. Before conducting sale promotion activities, traders must register them with the state management agency in charge of commerce, and after such sale promotion activities are completed, report sale promotion results to such agency.
2. The Government shall provide for in detail the registration of sale promotion activities with, and the notification of results of such activities to, the state management agency in charge of commerce.

## **Section 2. COMMERCIAL ADVERTISING**

### **Article 102.- Commercial advertising**

Commercial advertising means commercial promotion activities of traders aimed at introducing to customers their goods and service business activities.

### **Article 103.- Right to commercial advertising**

1. Vietnamese traders, branches of Vietnamese traders and branches of foreign traders licensed to conduct commercial activities in Vietnam shall have the right to advertise their goods and/or service business activities or to hire traders providing advertising services to do so for them.
2. Representative offices of traders must not directly conduct commercial advertising activities. When being authorized by traders, representative offices may sign contracts with traders providing commercial advertising services to advertise for the traders they are representing.
3. Foreign traders who wish to commercially advertise their goods and/or service business activities in Vietnam shall have to hire Vietnamese traders engaged in business of providing commercial advertising services to do so.

### **Article 104.- Provision of commercial advertising services**

Provision of commercial advertising services means commercial activities of traders aimed at conducting commercial advertisement for other traders.

### **Article 105.- Commercial advertising products**

Commercial advertising products consist of information in images, actions, sounds, voices, scripts, symbols, colors and lights containing commercial advertising details.

### **Article 106.- Means of commercial advertising**

1. Means of commercial advertising are instruments used for introducing commercial advertising products.

2. Means of commercial advertising include:

a/ The mass media;

b/ Means of communications;

c/ Publications of all kinds;

61 All kinds of boards, signs, banners, panels, posters, fixed objects or means of transportation and other movable objects;

e/ Other means of commercial advertising.

### **Article 107.- Use of means of commercial advertising**

1. The use of means of commercial advertising specified in Article 106 of this Law must comply with the regulations of the competent state management body.

2. The use of means of commercial advertising must satisfy the following requirements:

a/ Being in compliance with the provisions of law on press, publishing, information, programs on cultural or sport activities, trade fairs and exhibitions;

b/ Being in compliance with the regulations on locations of advertisement, causing no adverse impact on the landscape, environment, traffic order and safety, and social safety;

c/ Being in accordance with the intensity, time volume and timing prescribed for each type of mass media.

### **Article 108.- Protection of intellectual property rights over commercial advertising products**

Traders shall have the right to register for protection of their intellectual property rights over commercial advertising products according to the provisions of law.

### **Article 109.- Prohibited commercial advertisements**

1. Advertisements which reveal state secrets, are detrimental to the national independence, sovereignty and security, and social order and safety.

2. Advertisements that use advertising products or means of advertisement which are contrary to the historic, cultural and ethical traditions and the fine customs and practices of Vietnam and in contravention of law.

3. Advertisements for goods and services which are banned or restricted from business or banned from advertisement by the State.

4. Advertisements for cigarette and alcohol with an alcoholic volume of 30° or higher and products and goods not yet permitted for circulation or services not yet permitted for provision in the Vietnamese market at the time of advertising.

5. Commercial advertisements which can be taken advantage of to cause harms to interests of the State, organizations and/or individuals.

6. Advertisements using the method of comparing a trader's goods and service production and business activities with goods and service production and business activities of the same kind of other traders.

7. Advertisements containing untruthful information on any of the following contents: quantity, quality, price, utility, design, origin, category, packing, service mode and warranty duration of goods or services.

8. Advertisements for a trader's business activities by using advertising products which infringe upon intellectual property rights; using images of other organizations or individuals for advertising purpose without the consent of such organizations or individuals.

9. Advertisements for the purpose of unfair competition according to the provisions of law.

#### **Article 110.-Commercial advertising service contracts**

Commercial advertising service contracts must be made in writing or in other forms of equivalent legal validity.

#### **Article 111.- Rights of commercial advertising hirers**

Unless otherwise agreed, commercial advertising hirers shall have the following rights:

1. To select commercial advertising distributors, forms, contents, means, scope and duration;
2. To inspect and supervise the performance of commercial advertising service contracts.

#### **Article 112.- Obligations of commercial advertising hirers**

Unless otherwise agreed, commercial advertising hirers shall have the following obligations:

1. To supply commercial advertising service providers with truthful and accurate information on goods and commercial service business activities, and to be responsible for such information;
2. To pay commercial advertising service charges and other reasonable costs.

#### **Article 113.- Rights of commercial advertising service providers**

Unless otherwise agreed, commercial advertising service providers shall have the following rights:

1. To request commercial advertising hirers to supply truthful and accurate information according to agreements in contracts;
2. To receive commercial advertising service charges and other reasonable costs.

#### **Article 114.- Obligations of commercial advertising service providers**

Unless otherwise agreed, commercial advertising service providers shall have the following obligations:

1. To comply with service hirers' choice of commercial advertising distributors, forms, contents, means, scope and duration;
2. To organize truthful and accurate advertisement for goods or commercial service business activities according to information supplied by advertising hirers;
3. To perform other obligations agreed upon in commercial advertising service contracts.

#### **Article 115.- Commercial advertising distributors**

Commercial advertising distributors are persons who directly distribute commercial advertising products.

#### **Article 116.- Obligations of commercial advertising distributors**

Commercial advertising distributors shall have the following obligations:

1. To comply with the provisions of Article 107 of this Law on the use of means of commercial advertising;
2. To perform advertising distribution contracts already entered into with advertising distribution hirers;
3. To perform other obligations provided for by law.

### **Section 3. DISPLAY AND INTRODUCTION OF GOODS AND SERVICES**

#### **Article 117.- Display and introduction of goods and services**

Display and introduction of goods and services mean commercial promotion activities of traders that use goods and/or services and documents thereon to introduce such goods and/or services to customers.

#### **Article 118.- Right to display and introduce goods and services**

1. Vietnamese traders, branches of Vietnamese traders and Vietnam-based branches of foreign traders shall have the right to display and introduce goods and/or services; to select appropriate forms of display and introduction; to organize by themselves or hire traders providing goods/service display and introduction services to display and introduce their goods and/or services.
2. Representative offices of traders shall not be allowed to directly display and introduce goods and/ or services of traders they are representing, except for displays and introductions at their offices. When being authorized by traders, representative offices shall have the right to enter into contracts with traders providing goods/service display and introduction services for the display and introduction of goods and/or services of traders they are representing.
3. 3. Foreign traders not yet licensed to conduct commercial activities in Vietnam and wishing to display and introduce their goods and/or services in Vietnam must hire Vietnamese traders providing goods/service display and introduction services to do so.

#### **Article 119.- Provision of goods/service display and introduction services**

Provision of goods/service display and introduction services means commercial activities whereby a trader provides goods/service display and introduction services to other traders.

#### **Article 120.- Forms of display and introduction of goods and services**

1. Opening showrooms for displaying and introducing goods and/or services.
2. Displaying and introducing goods and/or services at trade centers or in entertainment, sport, cultural or artistic activities.
3. Organizing conferences and seminars involving the display and introduction of goods and/ or services.
4. Displaying and introducing goods and/or services online and in other forms specified by law

#### **Article 121.- Conditions for displayed and introduced goods and/or services**

1. Displayed and introduced goods and/or services must be those which are legally traded in the market.
2. Displayed and introduced goods and/or services must comply with the provisions of law on goods quality and goods labeling.

#### **Article 122.- Conditions for goods imported into Vietnam for display and introduction**

Goods imported into Vietnam for display and introduction must, apart from the conditions defined in Article 121 of this Law, also satisfy the following conditions:

1. Being goods permitted for import into Vietnam;
2. Goods which are temporarily imported for display and introduction must be re-exported after the end of such display and introduction within six months as from the date of temporary import; past this time limit, the procedures for time limit prolongation must be carried out at the customs offices where the temporary import has been made:
3. Goods temporarily imported for display and introduction which are sold in Vietnam shall comply with the provisions of Vietnamese law on import goods.

#### **Article 123.- Cases where display and introduction of goods and/or services are prohibited**

1. The organization of display and introduction of goods and/or services, or the use of forms and means of goods and/or service display and introduction, which are detrimental to national security, social order and safety, landscape, environment and human health;



2. Display and introduction of goods and/or services or use of forms and means of display and introduction, which are contrary to the historic, cultural and ethical traditions and fine customs of Vietnam;
3. Display and introduction of goods and/or services, which reveal state secrets;
4. Display and introduction of goods of other traders for comparison with one's own goods, except where the goods for comparison are counterfeit goods or goods infringing upon intellectual property rights according to the provisions of law;
5. Display and introduction of goods samples which are inconsistent with goods being traded in terms of quality, price, utility, design, category, packing, warranty duration and other quality standards in order to deceive customers.

**Article 124.-Contracts for provision of goods and/or service display and introduction services**

Contracts for provision of goods and/or service display and introduction services must be made in writing or in other forms of equivalent legal validity.

**Article 125.- Rights of goods and/or service display and introduction service hirers**

Unless otherwise agreed, goods and/or service display and introduction service hirers shall have the following rights:

1. To request goods and/or service display and introduction service providers to fulfill agreements in contracts;
2. To inspect and supervise the performance of goods and/or service display and introduction service contracts.

**Article 126.- Obligations of goods and/or service display and introduction service hirers**

Unless otherwise agreed, goods and/or service display and introduction service hirers shall have the following obligations:

1. To supply all goods and/or services to be displayed and introduced, or means to service providers as agreed upon in contracts;
2. To supply information on goods and/or services to be displayed and introduced and take responsibility for such information;
3. To pay service charges and other reasonable expenses.

**Article 127.- Rights of goods and/or service display and introduction service providers**

Unless otherwise agreed, goods and/or service display and introduction service providers shall have the following rights:

1. To request service hirers to supply goods and/ or services to be displayed and introduced within time limits agreed upon in contracts;
2. To request service hirers to supply information on goods and/or services to be displayed and introduced and other necessary means as agreed upon in contracts;
3. To receive service charges and other reasonable expenses.

**Article 128.- Obligations of goods and/or service display and introduction service providers**

Unless otherwise agreed, goods and/or service display and introduction service providers shall have the following obligations:

1. To display and introduce goods and/or services as agreed upon in contracts;
2. To preserve displayed and introduced goods, documents and means supplied to them during the performance of contracts; and upon the completion of the goods and/or service display and introduction, to return all displayed and introduced goods, documents and means to service hirers;

3. To conduct the goods and/or service display and introduction according to contents agreed with service hirers.

## **Section 4: TRADE FAIRS AND EXHIBITIONS**

### **Article 129.- Trade fairs and exhibitions**

Trade fairs and exhibitions mean commercial promotion activities conducted in a concentrated manner at particular locations and for given periods of time for traders to display and introduce their goods and/or services for the purpose of promoting them and seeking opportunities for entering into contracts for sale and purchase of goods or service contracts.

### **Article 130.- Provision of trade fair and exhibition services**

1. Provision of trade fair and exhibition services means commercial activities whereby traders dealing in these services provide services of organizing or participating in trade fairs and exhibitions to other traders for receiving trade fair and exhibition organization service charges.

2. Trade fair and exhibition organization service contracts must be made in writing or in other forms of equivalent legal validity.

### **Article 131.- Rights to organize or participate in trade fairs and exhibitions**

1. Vietnamese traders, branches of Vietnamese traders, Vietnam-based branches of foreign traders shall have the right to directly organize or participate in trade fairs and exhibitions for goods and/or services they trade in or hire traders providing trade fair and exhibition services to do so.

2. Representative offices of traders shall not be allowed to directly organize or participate in trade fairs and exhibitions. When being authorized by traders, representative offices shall have the right to sign contracts with traders providing trade fair and exhibition services to do so for the traders they are representing.

3. Foreign traders shall have the right to directly participate or hire Vietnamese traders providing trade fair and exhibition services to participate, on their behalf, in trade fairs and exhibitions in Vietnam. Where they wish to organize trade fairs and exhibitions in Vietnam, foreign traders must hire Vietnamese traders providing trade fair and exhibition services to do so.

### **Article 132.- Organization of trade fairs and exhibitions in Vietnam**

1. Trade fairs and exhibitions organized in Vietnam must be registered with and certified in writing by the state management agencies in charge of commerce of the provinces or centrally-run cities where such trade fairs and exhibitions are to be organized.

2. The Government shall specify the order, procedures, contents of registration and certification of the organization of trade fairs and exhibitions in Vietnam provided for in Clause 1 of this Article.

### **Article 133.- Organization of and participation in overseas trade fairs and exhibitions**

1. Traders not providing trade fair and exhibition services, when directly organizing or participating in overseas trade fairs and exhibitions for goods and/or services they trade in, must comply with the regulations on export of goods.

2. Traders providing trade fair and exhibition services, when arranging for other traders to participate in overseas trade fairs and exhibitions, must register such with the Ministry of Trade.

3. Traders that have not yet registered their business of providing trade fair and exhibition services shall not be allowed to arrange for other traders to participate in overseas trade fairs and exhibitions.

4. The Government shall specify the order, procedures and contents of registration for organization of, and participation in, overseas trade fairs and exhibitions provided for in Clauses 1 and 2 of this Article.

### **Article 134.- Goods and/or services**

displayed and introduced at trade fairs and exhibitions in Vietnam

1. Goods and/or services which are not permitted for participation in trade fairs and exhibitions include:

a/ Goods and/or services banned from business, subject to business restrictions, or not yet permitted for circulation according to the provisions of law;

b/ Goods and/or services provided by overseas traders and banned from import according to the provisions of law;

c/ Counterfeit goods and goods infringing upon intellectual property rights, except where they are displayed and introduced for comparison with genuine ones.

2. Apart from the provisions of this Law on trade fairs and exhibitions, goods and/or services subject to specialized management must also comply with regulations on specialized management of such goods and/or services.

3. Goods temporarily imported for participation in trade fairs or exhibitions in Vietnam must be re-exported within thirty days after the end of such trade fairs or exhibitions.

4. The temporary import for re-export of goods for participation in trade fairs or exhibitions in Vietnam must comply with the provisions of customs law and other relevant provisions of law.

#### **Article 135.- Goods and/or services participating in overseas trade fairs and exhibitions**

1. All types of goods and services shall be permitted to participate in overseas trade fairs and exhibitions, except for those banned from export according to the provisions of law.

2. Goods and/or services banned from export shall only be permitted for participation in overseas trade fairs and exhibitions when so approved by the Prime Minister.

3. The time limit for temporary export of goods for participation in overseas trade fairs and exhibitions shall be one year from the date such goods are temporarily exported. If past that time limit, the goods are not re-imported yet, such goods shall be subject to taxes and other financial obligations as provided for by Vietnamese law.

4. The temporary export for re-import of goods for participation in overseas trade fairs and exhibitions must comply with the provisions of customs law and other relevant provisions of law.

#### **Article 136.- Sale, presentation of goods as gifts and provision of services at trade fairs and exhibitions in Vietnam**

1. Goods and services displayed and introduced at trade fairs and exhibitions in Vietnam are permitted to be sold, presented as gifts or provided at such trade fairs and exhibitions; for imported goods, registration thereof must be made with customs offices, except for the cases specified in Clause 2 of this Article.

2. Goods which are imported under permits of competent state agencies shall be sold or presented as gifts only after written approvals of such competent state agencies are obtained.

3. The sale and presentation of goods as gifts at trade fairs and exhibitions mentioned in Clause 2, Article 134 of this Law must comply with regulations on specialized import management of such goods.

4. Goods sold or presented as gifts, and service provided at trade fairs and exhibitions in Vietnam shall be subject to taxes and other financial obligations as provided for by law.

#### **Article 137.- Sale, presentation of Vietnamese goods as gifts and provision of Vietnamese services participating in overseas trade fairs and exhibitions**

1. Vietnamese goods and services participating in overseas trade fairs and exhibitions are permitted to be sold, presented as gifts or provided at such trade fairs and exhibitions, except the cases defined in Clauses 2 and 3 of this Article.

2. The sale and presentation as gifts of goods which are banned from export but have been temporarily exported for participation in overseas trade fairs and exhibitions, shall be made only after the Prime Minister's approval is obtained.

3. Goods exported under permits of competent state agencies shall be sold or presented as gifts only after written approvals of such competent state agencies are obtained.

4. Vietnamese goods and/or services participating in overseas trade fairs and exhibitions and being sold, presented as gifts or provided overseas shall be subject to taxes and other financial obligations as provided for by law.

**Article 138.- Rights and obligations of organizations and individuals participating in trade fairs and exhibitions in Vietnam.**

1. To exercise rights and perform obligations as agreed upon with traders organizing trade fairs and exhibitions.

2. To sell, present goods as gifts and provide services displayed and introduced at trade fairs and exhibitions according to the provisions of law.

3. To temporarily import and re-export goods and documents on goods and/or services for display at trade fairs and exhibitions.

4. To comply with regulations on organization of trade fairs and exhibitions in Vietnam.

**Article 139.- Rights and obligations of traders organizing or participating in overseas trade fairs and exhibitions**

1. To temporarily export and re-import goods and documents on goods and/or services for display and introduction at trade fairs or exhibitions.

2. To comply with regulations on organization of, and participation in, overseas trade fairs and exhibitions.

3. To sell and present as gifts goods displayed and introduced at overseas trade fairs and exhibitions; and to pay taxes and fulfill other financial obligations as provided for by Vietnamese law.

**Article 140.- Rights and obligations of traders providing trade fair and exhibition services**

1. To post up topics and durations of trade fairs and exhibitions at places where such trade fairs and exhibitions are to be organized before their opening dates.

2. To request service hirers to supply goods for participation in trade fairs and exhibitions within time limits agreed upon in contracts.

3. To request service hirers to supply information on goods and/or services for participation in trade fairs and exhibitions and other necessary means as agreed upon in contracts;

4. To receive service charges and other reasonable expenses;

5. To organize trade fairs and exhibitions as agreed upon in contracts.

## **CHAPTER V: INTERMEDIARY ACTIVITIES IN COMMERCE**

### **Section 1: REPRESENTATION OF TRADERS**

**Article 141.- Representation of traders**

1. Representation of traders means an activity whereby a trader (referred to as representative) is authorized by another trader (referred to as nominator) to conduct commercial activities in the name and under the instructions of the latter for remuneration.

2. Where a trader nominates his/her/its personnel to act as his/her/its representative, the provisions of the Civil Code shall apply.

#### **Article 142.- Contracts for representation of traders**

Contracts for representation of traders must be made in writing or in other forms of equivalent legal validity.

#### **Article 143.- Scope of representation**

Parties may agree that the representative may conduct part or all of commercial activities within the scope of operation of the nominator.

#### **Article 144.- Duration of representation of traders**

1. The duration of representation is agreed upon by the parties.
2. Where no agreement is reached, the duration of representation shall expire when the nominator notifies the representative of the termination of the representation contract, or the representative notifies the nominator of the termination of the contract.
3. Unless otherwise agreed, if the nominator unilaterally notifies the termination of the representation contract according to Clause 2 of this Article, the representative may request the nominator to pay an amount of remuneration for the signing by the nominator of contracts with customers with whom the representative has negotiated and to pay other remunerations which the representative would otherwise have been entitled to.
4. Where the duration of representation expires according to Clause 2 of this Article at the request of the representative, the representative shall forfeit the right to remuneration for transactions which he/she/it would otherwise have been entitled to unless otherwise agreed upon by the parties.

#### **Article 145.- Obligations of representatives**

Unless otherwise agreed, a representative shall have the following obligations:

1. To conduct commercial activities in the name and for the interest of the nominator;
2. To notify the nominator of opportunities and results of performance of authorized commercial activities;
3. To follow instructions of the nominator if such instructions do not violate the provisions of law;
4. To refrain from conducting commercial activities in his/her/its own name or in the name of a third party within the scope of representation;
5. To refrain from disclosing or supplying to other people secrets related to commercial activities of the nominator during the period of representation and within two years after the termination of the representation contract;
6. To preserve assets and documents assigned for performing activities of representation.

#### **Article 146.- Obligations of nominators**

Unless otherwise agreed, a nominator shall have the following obligations:

1. To notify the representative immediately of the signing of contracts negotiated by the representative, the performance of contracts entered into by the representative, and the acceptance or non-acceptance of activities conducted by the representative outside the scope of representation;
2. To supply assets, documents and informatic-necessary for the representative to perform activities of representation;
3. To pay remuneration and other reasonable expenses to the representative;
4. To notify promptly the representative of the impossibility of entering into or performing the contract within the scope of representation.

#### **Article 147.- Right to enjoy representation remuneration**

1. Representatives shall enjoy remunerations for contracts entered into within the scope of representation. The right to enjoy remunerations arises from the time agreed upon by the parties in representation contracts.
2. Where it is not agreed upon, the remuneration rate for the representative shall be determined according to Article 86 of this Law.

#### **Article 148.- Payment of incurred expenses**

Unless otherwise agreed, representatives shall have the right to claim the payment of reasonable expenses incurred for the performance of representation activities.

#### **Article 149.- Lien**

Unless otherwise agreed, representatives shall have lien over assets and documents assigned to them to secure the payment of remunerations and expenses which are due.

### **Section 2: COMMERCIAL BROKERAGE**

#### **Article 150.- Commercial brokerage**

Commercial brokerage means a commercial activity whereby a trader acts as an intermediary (referred to as broker) between parties selling and purchasing goods or providing commercial services (referred to as principals) in the course of negotiations and entering into contracts for sale and purchase of goods or provision of services and shall be entitled to a remuneration under a brokerage contract.

#### **Article 151.- Obligations of commercial brokers**

Unless otherwise agreed, a commercial broker shall have the following obligations:

1. To preserve samples of goods and documents assigned for the performance of brokerage activities, and to return them to the principals after the completion of brokerage;
2. Not to disclose or supply information to the detriment of the interests of the principals;
3. To be responsible for the legal status, but not for the solvency, of the principals;
4. Not to take part in the performance of contracts between the principals, except where so authorized by the principals.

#### **Article 152.- Obligations of principals**

Unless otherwise agreed, a principal shall have the following obligations:

1. To supply information, documents, necessary means related to goods and services;
2. To pay brokerage remuneration and other reasonable expenses to the broker.

#### **Article 153.- The right to enjoy brokerage remuneration**

1. Unless otherwise agreed, the right to enjoy brokerage remuneration arises from the time the principals enter into contracts.
2. Where there is no agreement, brokerage remuneration rates shall be determined according to the provisions of Article 86 of this Law.

#### **Article 154.- Payment of expenses incurred in relation to brokerage**

Unless otherwise agreed, principals must pay all reasonable expenses incurred in relation to brokerage to brokers, even where the brokerage does not bring about any results for principals.

### **Section 3: SALE AND PURCHASE OF GOODS BY MANDATED DEALERS**

#### **Article 155.- Purchase and sale of goods by mandated dealers**

Purchase and sale of goods by mandated dealers mean commercial activities whereby the mandatory conducts the purchase and sale of goods in his/her/its own name under terms agreed upon with the mandator and is entitled to receive mandate commission.

**Article 156.- Mandatories**

A mandatory for purchase and sale of goods is a trader dealing in goods which are consistent with the mandated goods and conducting the purchase and sale of goods under terms agreed upon with the mandator.

**Article 157.- Mandators**

A mandator of purchase and sale of goods may, or may not, be a trader that authorizes a mandatory to conduct the purchase and sale of goods at his/ her/its request and pays a commission.

**Article 158.- Mandated goods**

All goods which are lawfully circulated may become the subject matter of a mandated sale and purchase.

**Article 159.- Mandate contracts**

Mandate contracts for purchase and sale of goods must be made in writing or in other forms of equivalent legal validity.

**Article 160.- Sub-mandate to a third party**

A mandatory shall not be allowed to sub-mandate a third party to perform the signed mandate contract for purchase and sale of goods, except where it is so approved in writing by the mandator.

**Article 161.- Multilateral mandate**

A mandatory may accept the mandate for purchase and sale of goods from different mandators.

**Article 162.- Rights of mandators**

Unless otherwise agreed, mandators shall have the following rights:

1. To request mandatories to supply adequate information on the performance of mandate contracts;
2. Not to bear responsibility in cases where mandatories commit law violations, except for cases specified in Clause 4, Article 163 of this Law.

**Article 163.- Obligations of mandators**

Unless otherwise agreed, mandators shall have the following obligations:

1. To provide information, documents and means necessary for the performance of mandate contracts;
2. To pay mandate commissions and other reasonable expenses to mandatories;
3. To hand over money and goods as agreed upon;
4. To bear joint responsibility in cases where mandatories commit law violations which are attributable to acts of mandators or intentional law-breaking acts of the parties.

**Article 164.- Rights of mandatories**

Unless otherwise agreed, mandatories shall have the following rights:

1. To request mandators to provide information and documents necessary for the performance of mandate contracts;
2. To receive mandate commissions;
3. Not to bear responsibility for goods handed over to mandators strictly under agreement.

**Article 165.- Obligations of mandatories**

Unless otherwise agreed, mandatories shall have the following obligations:

1. To conduct the purchase and sale of goods as agreed upon;
2. To notify mandators of matters related to the performance of mandate contracts;
3. To follow instructions of mandators as agreed upon;
4. To preserve assets and documents assigned to them for the performance of mandate contracts;
5. To keep secret information related to the performance of mandate contracts;
6. To hand over money and goods as agreed upon;
7. To bear joint responsibility for law violation acts of mandators, in cases where such law violation acts are partially attributable to their own faults

#### **Section 4: COMMERCIAL AGENCY**

##### **Article 166.- Commercial agency**

Commercial agency means a commercial activity whereby the principal and the agent agree that the agent, in its own name, sells or purchases goods for the principal or provides services of the principal to customers for remuneration.

##### **Article 167.- Principals and agents**

1. Principals are traders that deliver goods to agents for sale or provide money to agents for purchase of goods, or traders that authorize the provision of services to service-providing agents.
2. Agents are traders that receive goods to act as sale agents or receive money to act as purchase agents or accepts the authorization to provide services.

##### **Article 168.- Agency contracts**

Agency contracts must be made in writing or in other forms of equivalent legal validity.

##### **Article 169.- Forms of agency**

1. Off-take agency is a form of agency whereby the agent definitely sells or purchases a specific quantity of goods or provides a full service for the principal.
2. Exclusive agency is a form of agency whereby a sole agent is authorized by the principal to sell or purchase one or more goods items or to provide one or more types of services within a given geographical area.
3. General goods sale or purchase or service provision agency is a form of agency whereby an agent organizes a network of sub-agents to sell or purchase goods, or provide services for the principal.

The general agent represents the network of sub-agents. Sub-agents operate under the management and in the name of the general agent.

4. Other forms of agency agreed upon by the parties.

##### **Article 170.- Ownership right in commercial agency**

The principal is the owner of goods or money delivered to the agent(s).

##### **Article 171.- Agency remuneration**

1. Unless otherwise agreed, agency remuneration shall be paid to agents in the form of commission or price margin.
2. Where principals fix goods purchase or sale prices or service charge rates, agents shall enjoy commissions calculated in percentage of such goods purchase or sale prices or service charge rates.



3. Where principals do not fix goods purchase or sale prices or service charge rates but fix only agency prices, agents shall enjoy price margins. Price margin is determined to be the difference between goods purchase or sale price or service charge rate and the price fixed by the principals for the agent.

4. Where the parties do not agree upon the agency remuneration level, the remuneration level shall be calculated as follows:

a/ The actual remuneration level which has been previously paid by/to parties;

b/ Where Point a of this Clause cannot apply, the agency remuneration level shall be the average remuneration level applicable to the same type of goods or service paid by the principal to other agents;

c/ Where Points a and b of this Clause cannot apply, the agency remuneration level shall be the ordinary remuneration level applicable to the same type of goods or service in the market.

#### **Article 172.- Rights of principals**

Unless otherwise agreed, principals shall have the following rights:

1. To fix prices of goods purchased or sold or charge rates of services provided to customers under agency;
2. To fix agency prices;
3. To request agents to take security measures as provided for by law;
4. To request agents to make payments or deliver goods under agency contracts;
5. To inspect and supervise the performance of contracts by agents;

#### **Article 173.- Obligations of principals**

Unless otherwise agreed, principals shall have the following obligations:

1. To guide, supply information to, and facilitate, agents to perform agency contracts;
2. To bear responsibility for quality of goods of goods sale or purchase agents, and quality of services of service-providing agents;
3. To pay remuneration and other reasonable expenses to agents;
4. To return to agents their assets used as security (if any) upon the termination of agency contracts;
5. To bear joint responsibility for law violation acts of agents if such law violation acts are partly attributable to their faults.

#### **Article 174.- Rights of agents**

Unless otherwise agreed by the parties, agents shall have the following rights:

1. To enter into agency contracts with one or more principals, except for cases specified in Clause 7, Article 175 of this Law;
2. To request principals to deliver goods or money under agency contracts; to take back assets used as security (if any) upon the termination of agency contracts;
3. To request principals to guide, supply information and create other related conditions for the performance of agency contracts;
4. To decide on goods sale prices or service charge rates for customers, for off-take agents;
5. To enjoy remunerations and other lawful rights and interests brought about by agency activities.

#### **Article 175.- Obligations of agents**

Unless otherwise agreed, agents shall have the following obligations:

1. To purchase or sell goods or provide services to customers at prices or charge rates fixed by principals;
2. To comply strictly with agreements on handover and receipt of money and goods with principals;
3. To take security measures for performance of civil obligations as provided for by law;
4. To pay to principals any proceeds of the sale of goods, for sale agents; to deliver purchased goods to principals, for purchase agents; or to pay service charges to principals, for service-providing agents;
5. To preserve goods after the receipt thereof, for sale agents, or prior to the delivery thereof, for purchase agents; to bear joint responsibility for quality of goods of purchase or sale agents or quality of services of service-providing agents in cases where they are at fault;
6. To submit to inspection and supervision by principals, and to report to principals on their agency activities;
7. Where it is specified by law that an agent shall be allowed to enter in to an agency contract with a principal for a certain type of goods or service, such provision of law must be complied with.

**Article 176.- Payment in agency activities**

Unless otherwise agreed, payments for goods, payment of service charges and payment of agency remunerations shall be made in installments after agents complete the purchase or sale of a specific quantity of goods or the provision of a specific volume of services.

**Article 177.- Duration of agency**

1. Unless otherwise agreed, the duration of agency shall expire only after a reasonable period of time which must be at least 60 days after either party to the agency contract notifies the other party of the termination of such agency contract.

2. Unless otherwise agreed, if the principal notifies the termination of the agency contract according to the provisions of Clause 1 of this Article, the agent shall have the right to request the principal to pay a compensation for the period of time during which it has acted as an agent for such principal.

The value of such compensation shall be an average one-month's agency remuneration for each year the agent has acted as an agent for the principal. Where the duration of agency is less than one year, such compensation shall be equal to an average one-month's agency remuneration during the agency term.

3. Where an agency contract is terminated at the request of the agent, the agent shall not have the right to request the principal to pay compensation for the period of time during which it has acted as an agent for the principal.

## **CHAPTER VI: SOME OTHER SPECIFIC COMMERCIAL ACTIVITIES**

### **Section 1. COMMERCIAL PROCESSING**

**Article 178.- Commercial processing**

Commercial processing means a commercial activity whereby a processor uses part or whole of raw materials and materials supplied by the processee to perform one or several stages of the production process at the latter's request in order to receive remuneration.

**Article 179.- Processing contracts**

Processing contracts must be made in writing or in other forms of equivalent legal validity.

**Article 180.- Goods for processing**

1. Goods of all types can be processed, except for goods banned from business.
2. In case of processing of goods for foreign traders for overseas consumption, goods banned from business, goods banned from export or import may be processed if so permitted by competent state agencies.

#### **Article 181.- Rights and obligations of processees**

1. To hand over part or whole of raw materials and materials for processing in accordance with processing contracts or transfer money for purchase of materials with agreed quantities, quality and at agreed prices;
2. To take back all processed products, leased or lent machinery and equipment, raw materials, auxiliary materials, supplies and discarded materials after the liquidation of processing contracts, unless otherwise agreed.
3. To sell, destroy, donate or give as gifts on the spot processed products, leased or lent machinery and equipments, raw materials, auxiliary materials.

redundant supplies, faulty products and discarded materials according to agreements and provisions of law.

4. To send their representatives to examine and supervise processing activities at processing places, to assign experts to guide production technology and inspect quality of processed products according to agreements in processing contracts.
5. To be responsible for the legality of the intellectual property rights over processed goods, raw materials, materials, machinery and equipment for processing handed over to processors.

#### **Article 182.- Rights and obligations of processors**

1. To supply a part or whole of raw materials and materials for processing as agreed upon with processees in terms of quantities, quality, technical standards and prices.
2. To receive processing remunerations and other reasonable expenses.
3. In case of processing for foreign organizations and individuals, to be entitled to export on spot processed products; leased or borrowed machinery and equipment, raw materials, materials, redundant supplies, faulty products and discarded materials under the authorization of processees.
4. In case of processing for foreign organizations and individuals, to be exempt from import tax on machinery, equipment, raw materials, auxiliary materials and supplies, that are temporarily imported for the performance of processing contracts according to the provisions of tax law.
5. To be responsible for the legality of goods processing activities in cases where goods being processed are those banned from business, export or import.

#### **Article 183.- Processing remuneration**

1. Processors may receive processing remunerations paid in cash or in processed products, or machinery and equipment used for the processing.
2. In case of processing for foreign organizations and individuals, if processors receive processing remunerations in processed products, machinery and equipment used for processing, regulations on import of such products, machinery and equipment must be complied with.

#### **Article 184.- Technology transfer in goods processing with foreign organizations and individuals.**

Technology transfer in goods processing with foreign organizations and individuals shall be carried out in accordance with agreements in processing contracts and the provisions of Vietnamese law on technology transfer.

## **Section 2. AUCTION OF GOODS**

#### **Article 185.- Auction of goods**

1. Auction of goods means a commercial activity whereby sellers themselves conduct or hire auction organizers to conduct public sale of goods to select purchasers that offer the highest prices.

2. Auctions of goods shall be performed by either of the following two modes:

a/ Upward bidding mode, which is an auctioning mode whereby the person who offers the highest price as compared with the reserve price shall have the right to purchase the auctioned goods;

b/ Downward bidding mode, which is an auctioning mode whereby the person who first accepts the reserve price or the lower price next to the reserve price shall have the right to purchase the auctioned goods.

#### **Article 186.- Auction organizers, goods sellers**

1. Auction organizers are traders that register the business of providing auctioning services or sell their own goods in cases where goods sellers conduct auctions by themselves.

2. Goods sellers are owners of such goods or persons mandated by goods owners to sell goods or persons entitled to sell goods of others according to the provisions of law.

#### **Article 187.- Auction participants, auctioneers**

1. Auction participants are organizations and individuals that register to participate in auctions.

2. Auctioneers are auction organizers or persons authorized by auction organizers to run auctions.

#### **Article 188.- Auctioning principles**

The auction of goods in commerce must be conducted on the principles of publicity, honesty and assurance of legitimate rights and interests of auction participants.

#### **Article 189.- Rights of auction organizers**

Unless otherwise agreed, auction organizers shall have the following rights:

1. To request goods sellers to provide fully, accurately and promptly necessary information on auctioned goods, to create conditions for auction organizers or auction participants to examine auctioned goods and hand over auctioned goods to goods purchasers in cases where auction organizers are not goods sellers;

2. To determine reserve prices in cases where auction organizers are sellers of auctioned goods or persons authorized by goods sellers;

3. To organize auctions;

4. To request goods purchasers to make payments;

5. To receive auction service charges paid by goods sellers according to the provisions of Article 211 of this Law.

#### **Article 190.- Obligations of auction organizers**

1. To organize auctions of goods in compliance with the principles and procedures provided for by law and by auction modes agreed upon with goods sellers.

2. To notify and post up in a public, full and accurate manner necessary information on auctioned goods.

3. To preserve auctioned goods when they are entrusted by sellers for safe-keeping.

4. To display goods, goods samples or documents introducing goods for auction participants to consider.

5. To compile documents on auctions of goods and send them to goods sellers and purchasers and relevant parties according to the provisions of Article 203 of this Law.

6. To deliver auctioned goods to purchasers according to contracts for provision of goods auctioning services.

7. To carry out the procedures for transferring ownership rights over auctioned goods which are subject to the ownership registration as provided for by law, unless otherwise agreed with goods sellers.

8. To pay to goods sellers proceeds from the sale of goods, including differences collected from persons that withdraw their offered prices defined in Clause 3, Article 204 of this Law or return unsold goods to goods sellers according to agreements. In case of no agreement, to pay money to goods seller within three working days after receiving money from goods purchasers, or to return the goods immediately within a reasonable time after auctions;

**Article 191.- Rights of goods sellers that are not auction organizers**

Unless otherwise agreed, goods sellers shall have the following rights :

1. To receive money amounts for auctioned goods and differences collected in cases specified in Clause 3, Article 204 of this Law or receive goods back in case of unsuccessful auctions;
2. To supervise the organization of auctions of goods.

**Article 192.- Obligations of goods sellers that are not auction organizers**

Unless otherwise agreed, goods sellers shall have the following obligations:

1. To deliver goods to auction organizers, create conditions for auction organizers and auction participants to examine goods, and supply in a full, accurate and timely manner necessary information on auctioned goods;
2. To pay auction organizing service charges according to Article 211 of this Law.

**Article 193.- Goods auction-organizing service contracts**

1. Goods auction organizing service contracts must be made in writing or in other forms of equivalent legal validity.
2. In cases where auctioned goods are objects of pledges or mortgages, goods auction organizing service contracts must be approved by pledgees or mortgagees, and sellers shall have to notify auction participants of the pledged or mortgaged goods.
3. If the auction is agreed upon in pledge or mortgage contracts but pledgors or mortgagors are absent without plausible reasons or refuse to enter into goods auction organizing service contracts, such contracts shall be entered into between pledgees or mortgagees and auction organizers.

**Article 194.- Determination of reserve prices**

1. Goods sellers must determine reserve prices. In cases where auction organizers are authorized to determine reserve prices, goods sellers must be notified thereof before auctions are posted up.
2. In cases where auctioned goods are objects of pledges or mortgages, pledgees or mortgagees must reach agreements with pledgors or mortgagors on the determination of reserve prices.
3. If the auction is agreed upon in pledge or mortgage contracts but pledgors or mortgagors are absent without plausible reasons or refuse to enter into goods auction organizing service contracts, the reserve prices shall be determined by pledgees or mortgagees.

**Article 195.- Notification to persons with rights and obligations related to goods being objects of mortgage or pledge**

In cases where goods are objects of pledge or mortgage, auction organizers, simultaneously with posting up goods auctions, must notify persons with related rights and obligations within seven working days before such goods are auctioned according to the provisions of Article 197 of this Law.

**Article 196.- Time limit for notification and posting up of goods auctions**

1. Within seven working days before a goods auction is held, the auction organizer must post up the auction at the auction venue, the place of goods display and his/her/its head office according to the provisions of Article 197 of this Law.

2. In cases where auction organizers are also goods sellers, the time limit for posting up auctions shall be decided by goods sellers themselves.

**Article 197.- Contents of goods auction notification and posting up**

A notice and post-up of a goods auction must have all the following contents:

1. The date and venue of auction;
2. The name and address of the auction organizer;
3. The name and address of the goods seller;
4. The list of goods, their quantities and quality;
5. The reserve prices;
6. Necessary information on the goods;
7. The place and time for displaying the goods;
8. The place and time for consulting the goods files;
9. The place and time for registering the purchase of goods.

**Article 198.- Persons not allowed to participate in auctions**

1. Persons who do not have civil act capacity, lose civil act capacity, or have restricted civil act capacity under the provisions of the Civil Code, or persons who, at the time of auction, are unable to cognize or control their acts;
2. Persons working in auctioning organizations; their parents, spouses and children;
3. Persons who have personally conducted the assessment of to be-auctioned goods; their parents, spouses and children;
4. Persons who do not have the right to purchase auctioned goods as provided for by law.

**Article 199.- Registration for participation in auctions**

1. Auction organizers may request persons who wish to participate in auctions to register for the auction participation before such auctions take place.
2. Auction organizers may request persons who wish to participate in auctions to make token payments which must not exceed 2% of the reserve prices of auctioned goods.
3. Where persons participating in auctions purchase auctioned goods, their token payments shall be cleared against the purchase prices; if they cannot purchase auctioned goods, their token payments shall be refunded to them right after auctions are completed.
4. Where persons who register for participation in auctions have made token payments but later failed to participate in auctions, auction organizers shall be entitled to retain such token payments.

**Article 200.- Display of auctioned goods**

Goods, goods samples, documents introducing goods and other necessary information on such goods must be displayed at places announced since the posting up.

**Article 201.- Conducting of auctions**

An auction shall be conducted in the following order:

1. The auctioneer makes a roll call of registered participants in the goods auction;
2. The auctioneer presents each auctioned goods item, repeats their reserve prices, answer questions of the auction participants, and ask them to offer bids;
3. As for the upward bidding mode, the auctioneer must clearly and accurately repeat the latest offered price which is higher than the price offered by the previous bidder for at least three times with

an interval of at least thirty seconds. The auctioneer shall announce the winning bidder to purchase the auctioned goods only if after repeating for three times the price offered by such person, no one offers a higher price;

4. As for the downward bidding mode, the auctioneer must clearly and accurately repeat every reduced price level below the reserve price for at least three times with an interval of at least thirty seconds. The auctioneer shall announce immediately the person who first accepts the reserve price or any reduced price level below the reserve price to have the right to purchase the auctioned goods.

5. In cases where many persons concurrently offer the last price as for the upward bidding mode, or the first price as for the downward bidding mode, the auctioneer shall have to organize a lot drawing among such persons and announce the person who has drawn the winning lot as the purchaser of auctioned goods.

6. The auctioneer shall have to prepare a document on goods auction right at the auction venue, even when the auction is unsuccessful. The auction document must clearly state the auction result and be signed by the auctioneer, the purchaser and two witnesses from among the auction participants. For auctioned goods which must be notarized by the State Notary according to the provisions of law, the auction document must also be notarized.

#### **Article 202.- Unsuccessful auctions**

An auction shall be considered unsuccessful in the following cases:

1. There is no auction participant or no bid price is offered;
2. The highest price offered is lower than the reserve price, for the upward bidding mode.

#### **Article 203.- Goods auction documents**

1. Goods auction documents are documents certifying the goods purchase and sale. A goods auction document must have the following contents:

- a/ The name and address of the auction organizer;
- b/ The name and address of the auctioneer;
- c/ The name and address of the goods seller;
- d/ The name and address of the goods purchaser;
- e/ The time and venue of the auction;
- f/ The auctioned goods;
- g/ The price at which the goods were sold;
- h/ The names and addresses of two witnesses.

2. Auction documents must be sent to goods sellers, goods purchasers and related parties.

3. In case of unsuccessful auctions, auction documents must clearly state that the auctions were unsuccessful and have the contents specified at Points a, b, c, e, f and h, Clause 1 of this Article.

#### **Article 204.- Withdrawal of offered prices**

1. In case of an auction by the upward bidding mode, if the person offering the highest price immediately withdraws his/her bid, the auction shall still continue, starting again from the preceding offered price. In case of an auction by the downward bidding mode, if the person who first accepts the price immediately withdraws the accepted price,

the auction shall still continue, starting again from the preceding accepted price.

2. The person who withdraws his/her offered price or withdraws his/her acceptance of the price shall not be allowed to further participate in the auction.

3. Where the auctioned goods are sold at a price lower than the withdrawn price which is previously offered for the upward bidding mode, or accepted for the downward bidding mode, the bid withdrawer shall have to pay the price difference to the auction organizer. Where the goods are sold at a higher price, the bid withdrawer shall not be entitled to such a difference.

4. In case of an unsuccessful auction, the bid withdrawer shall have to bear expenses for the auction and not be refunded his/her token payment.

#### **Article 205.- Refusal to purchase**

1. Unless otherwise agreed, after auctions are declared to be complete, purchasers shall be held liable. If purchasers refuse to purchase goods, they must obtain consents of goods sellers and bear all costs related to the organization of auctions.

2. In cases where purchasers of auctioned goods have paid token payments but refuse to purchase such goods, they shall not be refunded such token payments. Such token payments shall belong to goods sellers.

#### **Article 206.- Registration of ownership right**

1. Auction documents shall serve as basis for the transfer of the ownership right over auctioned goods, which must be registered according to the provisions of law.

2. On the basis of goods auction documents and other valid papers, competent state agencies shall have to register the goods ownership rights for goods purchasers according to the provisions of law.

3. Sellers and auction organizers are obliged to carry out procedures for transferring goods ownership rights to goods purchasers. Expenses for carrying out procedures for such transfer shall be deducted from proceeds from goods sale, unless otherwise agreed.

#### **Article 207.- Time of payment for goods purchase**

Time of payment for goods purchase shall be agreed upon by auction organizers and auctioned goods purchasers. If no agreement is reached, the time of payment for goods purchase shall be the time provided for in Article 55 of this Law.

#### **Article 208.- Place of payment for goods purchase**

Place of payment for goods purchase shall be agreed upon by auction organizers and goods purchasers. If no agreement is reached, the place of payment shall be the places of business of auction organizers.

#### **Article 209.- Time limit for delivery of auctioned goods**

Unless otherwise agreed upon by auction organizers and goods purchasers, the time limit for delivery of auctioned goods is provided for as follows:

1. For goods over which the ownership right is not required to be registered, auction organizers must deliver goods to their purchasers immediately after auction documents are made;

2. For goods over which the ownership rights have been registered, auction organizers must immediately carry out procedures for transferring the ownership rights and deliver goods to their purchasers immediately after the procedures for ownership right transfer are completed. .

#### **Article 210.- Place of delivery of auctioned goods**

1. Where goods are things attached to land, the place of delivery thereof is the place where such goods are located.

2. Where goods are movables, the place of delivery thereof is the place where the auction is organized, unless otherwise agreed upon by auction organizers and goods purchasers.

#### **Article 211.- Goods auction service charges**



Where there is no agreement on goods auction service charges, such charges shall be determined as follows:

1. In case of successful auctions, auction service charges shall be determined according to Article 86 of this Law;
2. In case of unsuccessful auctions, goods sellers must pay a charge equal to 50% of the charge rate provided for in Clause 1 of this Article.

#### **Article 212.- Expenses related to auctions of goods**

Unless otherwise agreed upon between goods sellers and auction organizers, expenses related to auctions of goods shall be determined as follows

1. Goods sellers shall bear the expenses for transportation of goods to the agreed places and the expenses for preservation of goods in cases where they do not deliver the goods to auction organizers for preservation;
2. Auction organizers shall bear the expenses for preservation of goods delivered to them, the expenses for posting up, notification and organization of auctions and other related expenses.

#### **Article 213.- Responsibilities for auctioned goods untrue to notified or posted up ones**

1. Within the time limit provided for in Article 318 of this Law, goods purchasers may return the goods to auction organizers and request compensations for damage if the auctioned goods are untrue to notified or posted up ones.
2. Where the auction organizer defined in Clause 1 of this Article is not the seller and the untruthful notified or posted up contents are attributable to the fault of the seller, the auction organizer shall have the right to return the goods and claim damages from the seller.

### **Section 3. BIDDING FOR GOODS OR SERVICES**

#### **Article 214.- Bidding for goods or services**

1. Bidding for goods or services means a commercial activity whereby a party purchases goods or services through bidding (referred to as bid solicitor) in order to select, among traders participating in the bidding (referred to as bidders), a trader that satisfies the requirements set forth by the bid solicitor and is selected to enter into and perform a contract (referred to as bid winner).
2. The provisions on bidding in this Law shall not apply to bidding for public procurement according to the provisions of law.

#### **Article 215.- Forms of bidding**

1. Bidding for goods or services shall be conducted in either of the following two forms:
  - a/ Open bidding which is a form of bidding whereby the bid solicitor does not limit the number of bidders;
  - b/ Restricted bidding which is a form of bidding whereby the bid solicitor invites only a limited number of bidders to participate in the bidding.
2. The selection of the form of open bidding or restricted bidding shall be decided by bid solicitors.

#### **Article 216.- Modes of bidding**

1. Modes of bidding include bidding with one bid dossier bag and bidding with two dossier bags. Bid solicitors shall have the right to select the mode of bidding and must notify such in advance to bidders.
2. In case of bidding by mode of one dossier bag, a bidder shall submit its bid dossier consisting of technical and financial proposals in one dossier bag according to the requirements in the tendering dossier and the opening of bids shall be effected only once.

3. In case of bidding by mode of two dossier bags, a bidder shall submit its bid dossier consisting of technical and financial proposals in two separate dossier bags submitted simultaneously, and the opening of bids shall be effected twice. The dossier on technical proposals shall be opened first.

#### **Article 217.- Pre-qualification of bidders**

Bid solicitors may organize the pre-qualification of bidders in order to select those bidders that are capable of satisfying the conditions set forth by bid solicitors.

#### **Article 218.- Tendering dossiers**

1. A tendering dossier comprises: a/ Tendering notice;  
b/ Requirements related to goods or services subject to bidding;  
c/ Methods of evaluation, comparison, grading and selection of bidders;  
d/ Other instructions related to bidding.
2. Expenses for supply of documents provided to bidders shall be stipulated by bid solicitors.

#### **Article 219.- Tendering notice**

1. A tendering notice comprises the following principal contents:  
a/ Name and address of the bid solicitor;  
b/ Brief description of bidding contents;  
c/ Time limit, place and procedures for receipt of tendering dossiers;  
d/ Time limit, place and procedures for submission of bid dossiers;  
e/ Instructions for reading tendering dossiers.
2. Bid solicitors shall have to notify on the mass media in case of open bidding or send notices on invitation to register for bidding participation to qualified bidders in case of restricted bidding.

#### **Article 220.- Instructions to bidders**

Bid solicitors shall have to provide bidders with instructions on the tendering conditions, procedures to be applied in the bidding process, and to answer questions of bidders.

#### **Article 221.- Management of bid dossiers**

Bid solicitors shall have to manage bid dossiers.

#### **Article 222.- Bid bonds**

1. Bid bonds shall be made in the form of bid deposit, collateral or guarantee.
2. Bid solicitors may request bidders to make bid deposits, bid collaterals or provide bid guarantees when submitting their bid dossiers. The percentage of a bid deposit or collateral shall be set out by bid solicitor but must not exceed 3% of the total estimated value of goods or services subject to bidding.
3. Bid solicitors shall stipulate the mode and conditions for making deposits, collaterals or providing bid guarantees. In case of bid deposits or collaterals, such deposits or collaterals shall be returned to unsuccessful bidders within seven working days from the date the bidding results are announced.
4. Bidders shall not be allowed to receive back their bid deposits or collaterals in cases where they withdraw bid dossiers after the expiration of the time limit for submitting bid dossiers (referred to as "bidding closure"), fail to enter into contracts or refuse to perform contracts in cases where they are bid winners.
5. Guarantors for bidders are obliged to guarantee bids for the guaranteed within the value equal to deposits or collaterals.

### **Article 223.- Confidentiality of bidding information**

1. Bid solicitors must keep confidential bid dossiers.
2. Organizations and individuals involved in the organization of bidding and in the evaluation and selection of bids must keep confidential information relevant to the bidding.

### **Article 224.- Bid opening**

1. Bid opening is the opening of bid dossiers at a fixed time or in cases where there is no prefixed time, the time of bid opening shall be the time immediately after the bidding closure.
2. All bid dossiers submitted on time must be opened publicly by bid solicitors. Bidders shall be entitled to attend the bid opening.
3. Bid dossiers which are not submitted on time shall be rejected and returned to bidders unopened.

### **Article 225.- Consideration of bid dossiers upon bid opening**

1. Bid solicitors consider the validity of bid dossiers.
2. Bid solicitors may request bidders to clarify unclear contents in their bid dossiers. Requests and clarification of bid dossiers must be made in writing.

### **Article 226.- Minutes of bid opening**

1. Upon bid opening, the bid solicitor and bidders that are present shall have to sign the minutes of bid opening.
2. A minutes of bid opening must have the following contents:
  - a/ Name of goods or service subject to bidding;
  - b/ Date, time and place of the bid opening;
  - c/ Names and addresses of the bid solicitor and bidders;
  - d/ Bidding prices of bidders;
  - e/ Written amendments or supplements and relevant contents, if any.

### **Article 227.- Evaluation and comparison of bid dossiers**

1. Bid dossiers shall be evaluated and compared according to each criterion for an overall evaluation. The criteria for evaluation of bid dossiers shall be provided for by bid solicitors.
2. The criteria mentioned in Clause 1 of this Article shall be evaluated by the score-giving method or other methods determined prior to the bid opening.

### **Article 228.- Amendment of bid dossiers**

1. Bidders are not allowed to amend their bid dossiers after the bid opening.
2. In the course of evaluation and comparison of bid dossiers, bid solicitors may request bidders to clarify matters related to their bid dossiers. Requests of solicitors and replies of bidders must be made in writing.
3. Where bid solicitors amend some contents in tendering dossiers, they must send such amendments in writing to all bidders at least ten days before the deadline for submitting bid dossiers so that bidders have enough time to finalize their bid dossiers.

### **Article 229.- Classification and selection of bidders**

1. On the basis of the result of the evaluation of bid dossiers, bid solicitors shall have to classify and select bidders according to the method already determined.
2. Where many bidders obtain equal scores and equally satisfy criteria to win the bidding, the bid solicitor shall have the right to select winning bidder.

#### **Article 230.- Notification of bidding results and entry into contracts**

1. Immediately after bidding results are available, bid solicitors shall have to notify them to bidders.
2. Bid solicitors shall finalize and enter into contracts with bid winners on the following bases:
  - a/ Bidding results;
  - b/ Requirements stated in tendering dossiers;
  - c/ Contents in bid dossiers.

#### **Article 231.- Contract performance security**

1. Involved parties may agree that bid winners should make deposits or collaterals or be provided with guarantees to secure the performance of contracts. Money amount to be deposited or used as a collateral shall be set by bid solicitors but must not exceed 10% of the contract value.
2. Contract performance security measures shall be effective up to the time of completion of contractual obligations by bid winners.
3. Unless otherwise agreed, bid winners shall receive back deposits or collaterals as security for the performance of contracts upon the liquidation of such contracts. Bid winners shall not be entitled to receive back deposits or collaterals as security for the performance of contracts if they refuse to perform such contracts after they are entered into.
4. After paying deposits or making collaterals to secure the contract performance, bid winners shall have their bid deposits or collaterals refunded.

#### **Article 232.- Reorganization of bidding**

A bidding shall be reorganized in one of the following cases:

1. Where there is a violation of the regulations on bidding;
2. Where all bidders fail to satisfy the bidding requirements.

### **Section 4. LOGISTIC SERVICES**

#### **Article 233.- Logistic services**

Logistic services are commercial activities whereby traders organize the performance of one or many jobs including reception, transportation, warehousing, yard storage of cargoes, completion of customs procedures and other formalities and paperwork, provision of consultancy to customers, services of packaging, marking, delivery of goods, or other services related to goods according to agreements with customers in order to enjoy service charges.

#### **Article 234.- Conditions for logistic service provision**

1. Traders providing logistic services are enterprises fully satisfying the conditions for logistic service business provided for by law.
2. The Government shall specify logistic service business conditions.

#### **Article 235.- Rights and obligations of traders providing logistic services**

1. Unless otherwise agreed, traders providing logistic services shall have the following rights and obligations:
  - a/ To enjoy service charges and other reasonable expenses;
  - b/ To depart from instructions of customers during the performance of contracts for plausible reasons and in the interests of customers, provided that customers must be notified thereof immediately;
  - c/ To notify such customers immediately for further instructions in cases where instructions of customers cannot be followed in part or in whole;

d/ To perform their obligations within a reasonable period of time if there is no agreement on specific time limit for performance of their obligations to customers.

2. In the course of transportations of goods, traders providing logistic services must comply with the provisions of law and transportation practices.

#### **Article 236.- Rights and obligations of customers**

Unless otherwise agreed, customers shall have the following rights and obligations:

1. To guide, inspect and supervise the performance of contracts;
2. To provide sufficient instructions to traders providing logistic services;
3. To provide sufficient, detailed and accurate information on the goods to traders providing logistic services;
4. To pack and mark the goods according to contracts for purchase and sale of goods, except where there is an agreement that traders providing logistic services shall undertake to do such job;
5. To compensate for damage caused to, and pay reasonable costs incurred by, traders providing logistic services if such traders have strictly complied with customers' instructions or if the customers are at fault;
6. To pay traders providing logistic services all amounts due.

#### **Article 237.- Liability exemption for traders providing logistic services**

1. Apart from the cases of liability exemption specified in Article 294 of this Law, traders providing logistic services shall not be liable for the goods loss caused in the following cases:

a/ The loss is caused by faults of customers at their authorized persons;

b/ The loss is caused by traders that have strictly followed the instructions of their customers or persons authorized by customers;

c/ The loss is attributed to defects of the goods;

d/ The loss occurs in cases of liability exemption according to law and transportation practices, if traders providing logistic services organize transportation;

e/ Trader providing logistic services are not notified of complaints within fourteen days from the date they deliver goods to recipients;

f/ After being complained against, traders providing logistic services are not notified of lawsuits against them being instituted at arbitrations or courts within nine months from the date of delivery of goods.

2. Traders providing logistic services shall not be liable for the loss of profits which their customers would have earned, for any services delayed or provided at wrong addresses, for which they are not at fault.

#### **Article 238.- Limitation to liability**

1. Unless otherwise agreed, the full liability of traders providing logistic services shall not exceed the limitation of liability for the full loss of the goods.

2. The Government shall provide in detail for the limitation of liability of traders providing logistic services in compliance with provisions of law and international practices.

3. Traders providing logistic services shall not enjoy the limitation of liability for damage compensation if persons with related rights and benefits prove that the loss, damage or delayed delivery of goods is caused by deliberate actions or inactions of traders providing logistic services with the intention to cause such loss, damage or delayed delivery or their actions or inactions are known to be risky who were also aware of such loss, damage, or delay would certainly occur.

#### **Article 239.- The right to withhold and dispose of goods**

1. Traders providing logistic services shall be entitled to withhold a certain quantity of goods and related documents in order to claim payment of due debts by customers but shall have to notify promptly customers thereof in writing.
2. After forty five days from the date of notification of the withholding of goods or their related documents, if customers fail to pay debts, traders providing logistic services shall be entitled to dispose of such goods or documents according to provisions of law. Where there are indications of deterioration of goods, traders providing logistic services shall have the right to dispose of the goods immediately after any debt of customers becomes due.
3. Before disposing of goods, traders providing logistic services must immediately notify their customers of such disposal.
4. All expenses for the withholding and disposal of goods shall be borne by customers.
5. Traders providing logistic services shall be entitled to use proceeds from the disposal of goods to pay for debts owed to them by their customers and related expenses. If the proceeds from the disposal of goods exceed the value of debts, the difference must be returned to customers. From that point of time, traders providing logistic services shall no longer be responsible for the goods or documents already disposed of.

#### **Article 240.- Obligations of traders providing logistic services when withholding goods**

When the right to dispose of goods provided for in Article 239 of this Law is not yet exercised, traders providing logistic services and withholding goods shall have the following obligations:

1. To preserve and keep the goods;
2. Not to use goods without consent of the parties whose goods are withheld;
3. To return goods where the conditions for withholding and disposal of goods provided for in Article 239 of this Law no longer exist;
4. To pay damages to the parties whose goods are withheld if they cause loss or damage to withheld goods.

### **Section 5. TRANSIT OF GOODS THROUGH THE VIETNAMESE TERRITORY; AND GOODS TRANSIT SERVICES**

#### **Article 241.- Transit of goods**

Transit of goods means the transportation of goods owned by foreign organizations or individuals through the Vietnamese territory, including transshipment, portage, warehousing, shipment separation or alteration of modes of transportation or other jobs performed in the course of transit.

#### **Article 242.- Right to transit goods**

1. All goods owned by foreign organizations and individuals are allowed to be transited through the Vietnamese territory and subject only to customs clearance at import border-gates and export border-gates according to the provisions of law, except for the following cases:

a/ Goods are weapons, ammunitions, explosive materials and other type of highly dangerous goods, unless they are permitted by the Prime Minister;

b/ Goods are banned from business, export or import, which shall be allowed to be transited through the Vietnamese territory only when so permitted by the Trade Minister.

2. Goods in transit when being exported from, and means of transport carrying goods in trans when leaving, the Vietnamese territory must be the goods or means of transport which have previously entered the Vietnamese territory.

3. Foreign organizations or individuals that wish to transit their goods through the Vietnamese territory must hire Vietnamese traders providing transit services to do so, except for cases mentioned in Clause 4 of this Article.

4. The transit of goods through the Vietnamese territory by foreign organizations and individuals themselves or by hired foreign traders must comply with treaties to which the Socialist Republic of Vietnam is a contracting party and the provisions of Vietnamese law on exit, entry and transport.

**Article 243.- Routes for transit**

1. Goods shall only be transited through international border-gates and on certain routes in the Vietnamese territory.
2. On the basis of treaties to which the Socialist Republic of Vietnam is a contracting party, the Transport Minister shall specify routes on which the transportation of goods in transit is allowed.
3. In the course of transit, any change of routes on which the transportation of goods in transit is allowed must be consented by the Transport Minister.

**Article 244.- Transit by airways**

Transit by airways shall be carried out in accordance with treaties on aviation to which the Socialist Republic of Vietnam is a contracting party.

**Article 245.- Supervision of goods in transit**

Goods in transit through the Vietnamese territory shall be subject to the supervision by Vietnamese customs authorities throughout the course of transit. .

**Article 246, Transit duration**

1. The maximum duration of transit through the Vietnamese territory shall be thirty days from the date of completion of customs procedures at import border-gates, except where goods are warehoused in Vietnam or damaged or lost in the course of transit.
2. Where goods are warehoused in Vietnam or damaged or lost in duration of transit and require more time for warehousing, remedying such damage or loss, the transit duration may be prolonged according to the amount of time required for such jobs and with approval of customs authorities where transit procedures are carried out; in cases where goods are transited under permits of the Trade Minister, approval of the Trade Minister is required.
3. During the period of warehousing or remedying damage and loss mentioned in Clause 2 of this Article, transit goods and means of transport carrying transit goods must still be subject to supervision by Vietnamese customs authorities.

**Article 247.- Goods in transit consumed in Vietnam**

1. Goods in transit defined at Points a and b,

Clause 1, Article 242 of this Law shall not be permitted for consumption in Vietnam

2. Except for cases mentioned in Clause 1 of this Article, goods in transit shall be permitted for consumption in Vietnam only when it is so approved in writing by the Trade Minister.
3. The consumption of transit goods in Vietnam must comply with the provisions of Vietnamese law on import of goods, taxes, charges, fees and other financial obligations.

**Article 248.- Prohibited acts during transit**

1. To pay transit remunerations in transit goods.
2. To illegally consume goods in transit or means of transport carrying goods in transit.

**Article 249.- Goods transit services**

Goods transit services mean commercial activities whereby traders carry out the transit of goods under the ownership of foreign organizations or individuals through the Vietnamese territory for remunerations.

**Article 250.- Conditions for providing transit services**

Traders providing transit services must be enterprises with registrations of business of providing transportation services or logistic services according to Article 234 of this Law.

**Article 251.- Transit service contracts**

Transit service contracts must be made in writing or in other forms of equivalent legal validity.

**Article 252.- Rights and obligations of transit service hirers**

1. Unless otherwise agreed, transit service hirers shall have the following rights:

a/ To request transit service providers to receive goods at import border-gates at the agreed time;

b/ To request transit service providers to promptly notify the conditions of goods in the course of transit through the Vietnamese territory;

c/ To request transit service providers to carry out all necessary procedures to limit damage or loss of goods in transit in the course of transit through the Vietnamese territory.

2. Unless otherwise agreed, transit service hirers shall have the following obligations:

a/ To deliver goods to import border-gates of Vietnam on time as agreed;

b/ To supply transit service providers with sufficient information on the goods;

c/ To supply sufficient documents necessary for transit service providers to carry out procedures for import or transportation in the Vietnamese territory and the export procedures;

d/ To pay transit remunerations and other reasonable expenses to transit service providers.

**Article 253.- Rights and obligations of transit service providers**

Unless otherwise agreed, transit service providers shall have the following rights:

a/ To request transit service hirers to deliver goods to import border-gates of Vietnam on time as agreed;

b/ To request transit service hirers to supply sufficient necessary information on the goods;

c/ To request transit service hirers to supply sufficient necessary documents for carrying out procedures for import and transportation in the Vietnamese territory and export procedures;

d/ To receive transit remunerations and other reasonable expenses.

2. Unless otherwise agreed, transit service providers shall have the following obligations:

a/ To receive the goods at import border-gates at the agreed time;

b/ To carry out procedures to import and export the goods in transit into and out of the Vietnamese territory;

c/ To be responsible for goods in transit in the course of transit through the Vietnamese territory;

d/ To perform necessary jobs to minimize loss and/or damage to the goods in transit in the course of transit through the Vietnamese territory;

e/ To pay assorted fees and charges and other financial obligations applicable to goods in transit as provided for by Vietnamese law;

f/ To cooperate with competent state agencies of Vietnam in dealing with matters related to the goods in transit.

**Section 6. ASSESSMENT SERVICES**

**Article 254.- Assessment services**

Assessment services are commercial activities whereby traders perform necessary jobs to determine actual conditions of goods, results of the provision of services and other contents at the request of customers.



#### Article 255.- Contents of assessment

Assessment comprises one or a number of contents regarding the quantity, quality, packing value of goods, origin of goods, losses, safety, hygienic and quarantine standards, results of the provision of services, method of providing services and other contents at the request of customers.

#### Article 256.- Traders providing commercial assessment services

Only traders that satisfy all the conditions provided for by law and are granted business registration certificates for provision of commercial assessment services shall be allowed to provide assessment services and issue assessment certificates.

#### Article 257.- Conditions for providing commercial assessment services

Traders providing commercial assessment services must fully satisfy the following conditions:

1. Being enterprises established according to the provisions of law;
2. Having assessors who have all the qualifications specified in Article 259 of this Law;
3. Being capable of carrying out procedures and methods for assessing goods or services under the provisions of law, the international standards or which are commonly applied by countries in assessment of such goods or services.

#### Article 258.- Scope of providing commercial assessment services

Traders providing commercial assessment services shall be allowed to provide assessment services in domains of assessment only when they fully satisfy the conditions provided for in Clauses 2 and 3, Article 257 of this Law.

#### Article 259.- Criteria of assessors

1. An assessor must fully satisfy the following criteria:
  - a/ Possessing a university or college degree suitable to the requirements of the domain of assessment;
  - b/ Having a professional certificate for the assessment domain in cases where such professional certificate is required by law;
  - c/ Having worked for at least three years in the domain of assessment of goods or services.
2. Basing themselves on the criteria specified in Clause 1 of this Article, directors of enterprises providing commercial assessment services shall recognize assessors and be responsible before law for their decisions.

#### Article 260.- Assessment certificates

1. Assessment certificates are documents determining the actual conditions of goods and services according to the assessment contents required by customers.
2. Assessment certificates must be signed by competent representatives of enterprises providing commercial assessment services, have signatures and full names of assessors, and be affixed with professional seals already registered with competent agencies.
3. Assessment certificates shall only be valid for those contents already assessed.
4. Traders providing assessment services shall be responsible for accuracy of results and conclusions in assessment certificates.

#### Article 261.- Legal validity of assessment certificates with respect to assessment requesters

Assessment certificates shall be legally binding on assessment requesters in cases where they cannot prove that assessment results are non-objective, untruthful or obtained with technical or professional errors.

#### Article 262.- Legal validity of assessment certificates with respect to contractual parties

1. Where contracting parties agree on the use of an assessment certificate issued by a particular trader providing assessment services, such assessment certificate shall be legally binding on all the parties if they cannot prove that the assessment results are non-objective, untruthful or obtained with technical or professional errors.

2. Where contractual parties do not agree on the use of an assessment certificate issued by a particular trader providing assessment services, such assessment certificate shall only be binding on the party requesting the assessment according to Article 261 of this Law. The other contractual party shall have the right to request re-assessment.

3. If a re-assessment certificate is inconsistent with the original assessment certificate:

a/ Where the trader providing assessment services and issuing the original assessment certificate accepts the results stated in the reassessment certificate, such results shall be legally binding on all the parties;

b/ Where the trader providing assessment services and issuing the original assessment certificate does not accept the results stated in the reassessment certificate, the parties shall agree to select another trader providing assessment services to perform the re-assessment for the second time. The results of the second-time reassessment shall be legally binding on all the parties.

#### **Article 263.- Rights and obligations of traders providing assessment services**

1. Traders providing assessment services shall have the following rights:

a/ To request customers to supply in a sufficient, accurate and timely manner necessary documents for performance of assessment services;

b/ To receive assessment service charges and other reasonable expenses.

2. Traders providing assessment services shall have the following obligations:

a/ To observe the standards and other relevant provisions of law on assessment services;

b/ To perform the assessment in an honest, objective, independent, timely manner and according to the assessment procedures and methods;

c/ To issue assessment certificates;

d/ To pay violation fines and/or damages according to the provisions of Article 266 of this Law.

#### **Article 264.- Rights of customers**

Unless otherwise agreed, customers shall have the following rights:

1. To request traders providing assessment services to perform the assessment according to the agreed contents;

2. To request re-assessment if they have sound reasons to believe that traders providing assessment services fail to properly satisfy their requirements or perform the assessment in an untruthful and non-objective manner or with technical and professional errors;

3. To request payment of fines or damages according to the provisions of Article 266 of this Law.

#### **Article 265.- Obligations of customers**

Unless otherwise agreed, customers shall have the following obligations:

1. To supply in a sufficient, accurate and timely manner necessary documents to traders providing assessment services when so requested;

2. To pay assessment service charges and other reasonable expenses.

#### **Article 266.- Fines and damages in case of incorrect assessment results**

1. Where traders providing assessment services issue assessment certificates showing incorrect results caused by their unintentional faults, they must pay fines therefor to customers. The fine level shall be agreed upon by the parties but must not exceed ten times the assessment service charge.
2. Where traders providing assessment services issue assessment certificates showing incorrect results caused by their intentional faults, they must pay compensations for damage caused to customers that directly request the assessment.
3. Customers are obliged to prove that assessment results are incorrect and traders providing assessment services are at fault.

#### **Article 267.- Authorized assessment**

Where foreign traders providing assessment services are hired to perform assessment while having no license to operate in Vietnam, such traders may authorize traders providing assessment services which have been licensed to operate in Vietnam to provide assessment services but must still be held responsible for the assessment results.

#### **Article 268.- Assessment at the request of state agencies**

1. Traders providing assessment services which fully satisfy the conditions and criteria suitable with assessment requirements shall have to perform assessment at the request of state agencies.
2. State agencies which request the assessment shall have to pay assessment remunerations to traders providing assessment services according to agreements between the two parties on the basis of market prices.

### **Section 7. LEASE OF GOODS**

#### **Article 269.- Lease of goods**

Lease of goods means commercial activities whereby one party transfers the right to possess and use goods (referred to as lessor) to another party (referred to as lessee) for a certain duration to enjoy rentals.

#### **Article 270.- Rights and obligations of lessors**

Unless otherwise agreed, lessors shall have the following rights and obligations:

1. To deliver leased goods to lessees as agreed upon in lease contracts;
2. To ensure that the right of lessees to possess and use leased goods is not disputed by a concerned third party in the lease duration;
3. To ensure that leased goods are suitable to the use purposes of lessees as agreed upon by the parties;
4. To maintain and repair leased goods within a reasonable duration. Where the maintenance and repair of leased goods cause harms to the use of such goods by lessees, lessors shall have to reduce rent rates or prolong lease duration corresponding to the time of maintenance and repair;
5. To receive rentals according to agreements or provisions of law;
6. To take back leased goods upon the expiration of the lease duration.

#### **Article 271.- Rights and obligations of lessees**

Unless otherwise agreed, lessees shall have the following rights and obligations:

1. To possess and use leased goods according to lease contracts and the provisions of law. Where there is no specific agreement on the manner in which leased goods should be used, such leased goods shall be used in a manner appropriate to their nature;
2. To maintain and preserve leased goods in the lease duration and return such goods to lessors upon the expiration of the lease duration;

3. To request lessors to perform the maintenance and repair of goods. If lessors fail to perform such obligation within a reasonable period of time, lessees may perform the maintenance and repair of leased goods and lessors shall bear all reasonable expenses for such maintenance and repair;
4. To pay rentals as agreed or according to the provisions of law;
5. Not to sell or sub-lease the leased goods.

**Article 272.- Repair or alteration of original status of leased goods**

1. Lessees must not repair or alter the original status of leased goods if not so consented by lessors.
2. Where lessees perform the repair or alter the original status of the leased goods without lessors' consents, lessors shall have the right to request lessees to restore the original status of the leased goods or claim damages.

**Article 273.- Liability for loss occurring in the lease duration**

1. Unless otherwise agreed, lessors shall bear loss of leased goods occurring in the lease duration if lessees are not at fault in causing such loss.
2. In cases mentioned in Clause 1 of this Article, lessors shall have to repair leased goods within a reasonable duration to ensure the achievement of use purposes of lessees.

**Article 274.- Pass of risks incurred to leased goods**

Where the parties agree on the pass of risk to the lessee but the point of time of passing risks is not determined, that point of time shall be determined as follows:

1. In cases where the lease contract involves the transportation of goods:
  - a/ If the contract does not require the leased goods to be delivered at a designated place, risks shall be passed to the lessee when the leased goods are delivered to the first carrier;
  - b/ If the contract requires the leased goods to be delivered at a designated place, risks shall be passed to the lessee or the person authorized by the lessee to receive the goods at such place;
2. In cases where the leased goods are received by a bailee other than a carrier for delivery, risks shall be passed to the lessee as soon as the bailee acknowledge the lessee's right to possess the leased goods;
3. In other cases not mentioned in Clauses 1 and 2 of this Article, risks shall be passed to the lessee upon the receipt of the leased goods by the lessee.

**Article 275.- Leased goods inappropriate to contracts**

Where there is no specific agreement, goods shall be deemed inappropriate to contracts when such goods fall into one of the following cases:

1. They are suitable to common utility of goods of the same type;
2. They are not suitable to specific purposes which the lessee has informed the lessor or the lessor should have known at the time the contract was entered into;
3. Their quality is not the same as goods samples handed over by the lessor to the lessee.

**Article 276.- Rejection of goods**

1. The lessor shall give the lessee a reasonable time after the receipt of goods for inspection thereof.
2. The lessee may reject the goods in the following cases:
  - a/ The lessor does not give conditions and a reasonable time to the lessee for inspecting the goods;
  - b/ When inspecting the goods, the lessee discovers that the goods are inappropriate to the contract.

**Article 277.- Rectification or replacement of leased goods inappropriate to contracts**

1. Where the lessee rejects leased goods inappropriate to the contract, if the time limit for delivery of goods has not yet expired, the lessor may promptly notify the lessee of the rectification or replacement of the goods and then perform such rectification or replacement of goods within the remaining duration.

2. Where the lessor, when performing the rectification mentioned in Clause 1 of this Article, causes inconvenience or unreasonable expenses to be borne by the lessee, the lessee shall have the right to request the lessor to remedy such inconvenience or pay such unreasonable expenses.

#### **Article 278.- Acceptance of leased goods**

1. The lessee shall be deemed having accepted the leased goods after being given a reasonable opportunity to inspect the leased goods and taking one of the following acts:

a/ Not rejecting the leased goods;

b/ Certifying the appropriateness of the leased goods to agreements in the contract;

c/ Confirming the acceptance of the goods despite their inappropriateness to agreements in the contract.

2. If the lessee discovers the inappropriateness of the leased goods to the contract after accepting such goods and such inappropriateness is detectable through a reasonable inspection before the acceptance, the lessee shall not be entitled to rely on such inappropriateness as an excuse for returning the goods.

#### **Article 279.- Withdrawal of acceptance**

1. Lessees may withdraw their acceptance of part or whole of the leased goods if the inappropriateness of such leased goods may render them unable to achieve the objectives of the entry into of contracts and falls into one of the following cases:

a/ Lessors fail to make reasonable rectification according to Article 277 of this Law;

b/ Lessees fail to detect the inappropriateness of the goods due to lessors' guarantee.

2. The withdrawal of acceptance must be made within a reasonable period of time, which must not exceed three months as from the date lessees accept the goods.

#### **Article 280.- Responsibility for defects of leased goods**

Unless otherwise agreed, responsibility for

defects of leased goods is provided for as follows:

1. In the lease duration, lessors shall be responsible for any defects of leased goods which already exist at the time of delivery of such goods to lessees, except for cases mentioned in Clauses 2 and 3 of this Article;

2. Lessors shall not be responsible for any defects of leased goods which already exist prior to the entry into of contracts and which lessees knew or should have known;

3. Lessors shall not be responsible for any defects of leased goods which are detected after lessees have accepted the leased goods and which would have been detected by lessees through reasonable inspections before accepting the goods.

4. Lessors shall be responsible for any defects of leased goods appearing after the time of passing risks due to lessors' breaches of their committed obligations.

#### **Article 281.- Sub-lease**

1. Lessees shall be entitled to sub-lease goods only when they obtain consents of lessors. Lessees shall be responsible for sub-leased goods, unless they otherwise agree with lessors.

2. Where lessees sub-lease leased goods without consents of lessors, lessors may revoke lease contracts. Sub-lessees shall have to return the goods to lessors immediately

**Article 282.- Benefits arising in the lease duration**

Unless otherwise agreed, all benefits arising from leased goods in the lease duration shall belong to lessees.

**Article 283.- Change of ownership in the lease duration**

Any change of ownership over leased goods shall not affect the validity of lease contracts.

**Section 8. COMMERCIAL FRANCHISE****Article 284.- Commercial franchise**

Commercial franchise means a commercial activity whereby franchisors permit and require franchisees to undertake by themselves to purchase or sell goods or provide services on the following conditions:

1. The purchase or sale of goods or provision of services shall be conducted in accordance with methods of business organization prescribed by franchisors and associated with the franchisors' trademarks, trade names, business knows-how, business slogans, business logos and advertisements.
2. Franchisors shall be entitled to supervise and assist franchisees in conducting their business activities.

**Article 285.- Commercial franchise contracts**

Commercial franchise contracts must be made in writing or in other forms of equivalent legal validity.

**Article 286.- Rights of franchisors**

Unless otherwise agreed, franchisors shall have the following rights:

1. To receive franchise sums.
2. To organize advertising for the commercial franchise system and the commercial franchise network.
3. To conduct periodical or extraordinary inspections of activities of franchisees in order to ensure the uniformity of the commercial franchise system and the stability of quality of goods and services.

**Article 287.- Obligations of franchisors**

Unless otherwise agreed, franchisors shall have the following obligations:

1. To supply documents guiding the commercial franchise system to franchisees;
2. To provide initial training and regular technical assistance to franchisees for managing the latter's activities in accordance with the commercial franchise system;
3. To design and arrange places of sale of goods or provision of services at the expenses of franchisees;
4. To guarantee the intellectual property rights over objects stated in franchise contracts;
5. To equally treat all franchisees in the commercial franchise system.

**Article 288.- Rights of franchisees**

Unless otherwise agreed, franchisees shall have the following rights:

1. To request franchisors to provide fully technical assistance related to the commercial franchise system;
2. To request franchisors to equally treat all franchisees in the commercial franchise system.

**Article 289.- Obligations of franchisees**

Unless otherwise agreed, franchisees shall have the following obligations:

1. To pay franchise sums and other amounts under commercial franchise contracts;
2. To invest adequate material facilities, financial sources and human resources to take over business rights and know-how transferred by franchisors;
3. To submit to the control, supervision and instruction by franchisors; to comply with all requirements set forth by franchisors on designing and arrangement of places of sale of goods or provision of services;
4. To keep secret the franchised business know-how even after the expiration or termination of commercial franchise contracts;
5. To stop using trademarks, trade names, business slogans, logos and other intellectual property rights (if any) or systems of franchisors upon the expiration or termination of commercial franchise contracts;
6. To manage their activities in accordance with the commercial franchise system;
7. Not to sub-franchise without permissions of franchisors.

**Article 290.- Sub-franchise to a third party**

1. A franchisee shall be entitled to sub-franchise to a third party (referred to as sub-franchisee) if it is so consented by the franchisor.
2. Sub-franchisees shall have the rights and obligations of franchisees provided for in Articles 288 and 289 of this Law.

**Article 291.- Registration of commercial franchises**

1. Before granting commercial franchises, intended franchisors must register them with the Trade Ministry.
2. The Government shall specify the conditions for conducting business under commercial franchise and the order and procedures for registering commercial franchises.

## **CHAPTER VII: COMMERCIAL REMEDIES AND RESOLUTION OF COMMERCIAL DISPUTES**

### **Section 1. COMMERCIAL REMEDIES**

Article 292.- Types of commercial remedies

1. Specific performance of contracts.
2. Fines for breaches.
3. Forcible payment of damages.
4. Suspension of performance of contracts.
5. Stoppage of performance of contracts.
6. Cancellation of contracts.
7. Other remedies agreed upon by involved parties which are not contrary to the fundamental principles of Vietnamese law, treaties to which the Socialist Republic of Vietnam is a contracting party and international commercial practices.

**Article 293.- Application of commercial remedies against insubstantial breaches**

Unless otherwise agreed, aggrieved parties are not entitled to apply the remedy of suspension of performance of contracts, stoppage of performance of contracts or cancellation of contracts against insubstantial breaches.

• **Article 294.- Cases of exemption from liability for breaching acts**

1. A party that breaches a contract shall be exempted from liability in the following cases:

a/ A case of liability exemption agreed upon by the parties occurs;

b/A force majeure event occurs;

c/A breach by one party is entirely attributable to the other party's fault;

d/A breach is committed by one party as a result of the execution of a decision of a competent state management agency which the party cannot know, at the time the contract is entered into.

2. The contract-breaching party shall bear the burden of proof of cases of liability exemption.

**Article 295.- Notification and certification of cases of liability exemption**

1. The party must promptly notify in writing the other party of cases of liability exemption and possible consequences thereof.

2. When a case of liability exemption no longer exists, the contract-breaching party must promptly notify such to the other party. The breaching party must pay damages if it fails to notify or notifies the other party not in a prompt manner.

3. Breaching parties are obliged to prove their cases of liability exemption to aggrieved parties.

**Article 296.- Extension of time limit for performance of contracts, or refusal to perform contracts in force majeure circumstances**

1. In a force majeure circumstance, the parties may agree to extend the time limit for performing their respective contractual obligations. If the parties do not agree or cannot agree upon such extension, the time limit for performing contractual obligations shall be extended for a period of time equal to the time length of such force majeure circumstance plus a reasonable period of time for remedying consequences, but not exceeding:

a/ Five months for goods or services for which the agreed time limit for their delivery or provision does not exceed twelve months from the date the contract is entered into;

b/ Eight months for goods or services for which the agreed time limit for their delivery or provision exceeds twelve months from the date the contract is entered into.

2. Beyond the time limits specified in Clause 1 of this Article, the parties may refuse to perform the contract and neither party is entitled to request the other party to pay damages.

3. Where a party refuses to perform a contract, it must, within ten days from the expiry date of the time limit specified in Clause 1 of this Article, notify the other party thereof before the latter begins to perform its contractual obligations.

4. The extension of the time limit for performing contractual obligations mentioned in Clause 1 of this Article does not apply to contracts for purchase and sale of goods or contracts for provision of services with fixed time limit for goods delivery or service completion.

**Article 297.- Specific performance of contracts**

1. Specific performance of a contract means a remedy whereby the aggrieved party requests the breaching party to properly perform the contract or apply other measures to cause the contract to be performed and the breaching party shall have to bear any costs incurred.

2. Where the breaching party fails to deliver goods in full or provide services in accordance with the contract, it shall have to deliver goods in full or provide services in accordance with the contract. Where the breaching party delivers goods or provides services of inferior quality, it shall have to rectify defects of the goods or shortcomings of the services or to deliver other goods as substitutes or provide services in accordance with the contract. The breaching party must not use money or goods or services of other types as substitutes unless so consented by the aggrieved party.



3. Where the breaching party fails to comply with Clause 2 of this Article, the aggrieved party may purchase goods or receive services of correct type as stated in the contract from another seller or provider for substitution and the breaching party must bear the price difference and relevant expenses, if any; or may rectify defects of the goods or shortcomings of the services by itself, and the breaching party must pay actual and reasonable expenses for the rectification.

4. The aggrieved party shall have to receive

goods or services and make payments therefor if the breaching party has fulfilled all obligations according to Clause 2 of this Article.

5. Where the breaching party is the purchaser, the seller may request the purchaser to pay for and receive goods or fulfill other obligations stipulated in the contract and provided for in this Law.

#### **Article 298.- Extension of time limit for performance of obligations**

In case of specific performance of a contract, the aggrieved party may extend the time limit for a reasonable period for the breaching party to perform its contractual obligations.

#### **Article 299.- Relationship between the remedy of specific performance of contracts and other remedies**

1. Unless otherwise agreed, during the period of application of specific performance of a contract, the aggrieved party may claim for damages and fines to be paid but must not apply other remedies.

2. If the breaching party fails to carry out the remedy of specific performance of a contract within the time limit set by the aggrieved party, the aggrieved party may apply other remedies in order to protect its legitimate rights.

#### **Article 300.- Fine for breach**

Fine for breach means a remedy whereby the aggrieved party requests the breaching party to pay an amount of fine for its breach of a contract, if so agreed in the contract, except for cases of liability exemption specified in Article 294 of this Law.

#### **Article 301.- Fine level**

The fine level for a breach of a contractual obligation or the aggregate fine level for more than one breach shall be agreed upon in the contract by the parties but must not exceed 8% of the value of the breached contractual obligation portion, except for cases specified in Article 266 of this Law.

#### **Article 302.- Damages**

1. Damages means a remedy whereby the breaching party pays compensation for the loss caused by a contract-breaching act to the aggrieved party.

2. The value of damages covers the value of the material and direct loss suffered by the aggrieved party due to the breach of the breaching party and the direct profit which the aggrieved party would have earned if such breach had not been committed.

#### **Article 303.- Grounds for liability to pay damages**

Except for cases of liability exemption specified in Article 294 of this Law, liability to pay damages shall arise upon existence of all of the following elements:

1. Breach of the contract;
2. Material loss;
3. Act of breaching the contract is the direct cause of the loss.

#### **Article 304.- Burden of proof of loss**

The party claiming damages shall bear the burden of proof of the loss, the extent of the loss caused by the act of breach, and direct profit amount which the aggrieved party would have earned if the breach had not been committed.

#### **Article 305.- Obligations to mitigate loss**

The party claiming damages must apply appropriate measures to mitigate the loss caused by a contract breach, including the loss of direct profit which it would have earned. If the party claiming damages fails to do so, the breaching party may request a rebate of the value of damages to the extent of the loss that would have been mitigated.

#### **Article 306.- Right to claim interest on delayed payment**

Where a contract-breaching party delays making payment for goods or payment of service charges and other reasonable fees, the aggrieved party may claim an interest on such delayed payment at the average interest rate applicable to overdue debts in the market at the time of payment for the delayed period, unless otherwise agreed or provided for by law.

#### **Article 307.- Relationship between remedy of fines and remedy of damages**

1. Where the parties do not agree upon fines for breaches, the aggrieved party shall only be entitled to claim damages, unless otherwise provided for by this Law.
2. Where the parties agree upon fines for breaches, the aggrieved party shall be entitled to apply both remedies of fines and damages, unless otherwise provided for by this Law.

#### **Article 308.- Suspension of performance of contracts**

Except for cases of liability exemption specified in Article 294 of this Law, suspension of performance of a contract means a remedy whereby a party temporarily ceases the performance of its contractual obligations in one of the following cases:

1. Upon commission of a breaching act which serves as a condition for the suspension of performance of the contract as agreed upon by the
2. Upon a substantial breach of contractual obligations by a party.

#### **Article 309.- Legal consequences of suspension of performance of contracts**

1. Contracts which are suspended from performance are still in full force and effective.
2. Aggrieved parties are entitled to claim damages according to the provisions of this Law.

#### **Article 310.- Stoppage of performance of contracts**

Except for cases of liability exemption specified in Article 294 of this Law, stoppage of performance of a contract means a remedy whereby a party terminates the performance of its contractual obligations in one of the following cases:

1. Upon commission of a breaching act which serves as a condition for stoppage of the performance of the contract as agreed upon by the parties;
2. Upon a substantial breach of contractual obligations by a party.

#### **Article 311.- Legal consequences of stoppage of performance of contracts**

1. Where a contract is stopped from performance, it shall be terminated from the date when one party receives the notice on stoppage. The parties shall not have to further perform the contractual obligations. A party that has performed its contractual obligations may request the other party to pay or perform its reciprocal obligations.
2. The aggrieved party may claim damages according to the provisions of this Law.

#### **Article 312.- Cancellation of contracts**

1. Cancellation of a contract include; cancellation of part of a contract or cancellation of the entire contract.
2. Cancellation of the entire contract means the complete annulment of the performance of all contractual obligations for the entire contract.

3. Cancellation of part of a contract means the annulment of the performance of some contractual obligations while other parts of the contract are still valid.

4. Except for cases of liability exemption specified in Article 294 of this Law, the remedy of cancellation of contracts shall be applied in the following cases:

a/ Upon commission of a breaching act which serves as a condition for the cancellation of the contract as agreed upon by the parties;

b/ Upon a substantial breach of contractual obligations by a party.

#### **Article 313.- Cancellation of contracts in case of delivery of goods or provision of services in installments**

1. Where there is an agreement on delivery of goods or provision of services in installments, if one party fails to perform its obligation for the delivery of goods or provision of services and such failure constitutes a substantial breach in that time of delivery of goods or provision of services, the other party shall have the right to declare the cancellation of the contract for such delivery of goods or provision of services.

2. Where the failure of a party to perform its obligation for a delivery of goods or a provision of services serves as the basis for the other party to conclude that a substantial breach of the contract shall happen in subsequent deliveries of goods or provisions of services, the aggrieved party shall have the right to declare the cancellation of the contract for subsequent deliveries of goods or provisions of services, provided that such party must exercise that right within a reasonable period of time.

3. Where a party has declared the cancellation of a contract for a single delivery of goods or provision of services, such party shall still have the right to declare the cancellation of the contract for a delivery of goods or provision of services that has been conducted or will be conducted subsequently if the interrelation between the deliveries of goods makes the delivered goods or provided services unable to be used for the purposes intended by the parties at the time they enter into the contract.

#### **Article 314.- Legal consequences of cancellation of contracts**

1. Except for cases specified in Article 313 of this Law, following the cancellation of a contract, such contract shall be invalid from the time it is entered into, and the parties shall not have to continue performing their contractual obligations, except for their agreements on their post-cancellation rights and obligations and resolution of disputes.

2. The parties shall have the right to claim benefits brought about by their performance of their contractual obligations. Where both parties have indemnity obligations, their obligations must be performed concurrently. Where it is impossible to make the indemnity with benefits which one party has enjoyed, the obliged party must make the indemnity in cash.

3. Aggrieved parties are entitled to claim damages according to the provisions of this Law.

#### **Article 315.- Notification of suspension of performance of contracts, stoppage of performance of contracts or cancellation of contracts**

A party that suspends the performance of a contract, stops the performance of a contract or cancels a contract must immediately notify the other party of such suspension, stoppage or cancellation. Where a failure to do so causes a loss to the other party, the party that suspends the performance of the contract, stops the performance of the contract or cancels the contract must pay damages.

#### **Article 316.- Right to claim damages when other remedies have been applied**

A party shall not lose its right to claim damages for the loss caused by a contract breach by the other party when other remedies have been applied.

## **Section 2. RESOLUTION OF COMMERCIAL DISPUTES**

#### **Article 317.- Forms of resolution of disputes**

1. Negotiations between the parties.
2. Conciliation between the parties by a body, organization or individual selected by the parties to act as the conciliation mediator.
3. Resolution by the Arbitration or the Court.

Procedures for resolution of commercial disputes by arbitration or a court shall comply with procedures applicable to arbitrations or courts provided for by law.

**Article 318.- Time limit for lodging complaints**

Except for cases specified at Point e, Clause 1, Article 237 of this Law, the time limit for lodging complaints shall be agreed upon by the parties, where there is no such agreement, the time limit for lodging complaints shall be provided for as follows:

- a/ Three months from the date of delivery of goods for complaints about quantity of goods;
- b/ Six months from the date of delivery of goods for complaints about quality of goods. Where goods are under warranty, the time limit for lodging complaints shall be three months from the expiry of the warranty period;
- c/ Nine months from the date on which the breaching party shall have to fulfil its contractual obligations; or in the case of a warranty, from the expiry of the warranty period, for complaints about other violations.

**Article 319.- Statute of limitations for initiating lawsuits**

The statute of limitations for lawsuits applicable to commercial disputes shall be two years from the moment when the legitimate rights and interests are infringed upon, except for cases specified at Point f, Clause 1, Article 237 of this Law.

## **CHAPTER VIII: HANDLING OF VIOLATIONS OF COMMERCIAL LAW**

**Article 320.- Acts of violation of commercial law**

1. Acts of violation of commercial law include:
  - a/ Violating provisions on business registration; business licenses of traders; establishment and operation of representative offices and branches of Vietnamese traders and foreign traders;
  - b/ Violating provisions on domestically traded goods and services, and exported or imported goods and services; temporary import for re-export, temporary export for re-import; transfer through border-gates; transit;
  - c/ Violating provisions on taxes, invoices documents, accounting books and reports;
  - d/ Violating provisions on prices of goods and services;
  - e/ Violating provisions on labeling of domestically circulated goods and exports and imports;
  - f/ Smuggling, trading in goods illegally imported counterfeit goods or raw materials and materials for production of counterfeit goods, or conducting illegal business;
  - g/ Violating provisions on quality of domestically traded goods and services, and exported or imported goods and services;
  - h/ Defrauding and deceiving customers in the purchase and sale of goods or the provision of services;
  - i/ Violating provisions on protection of interests of customers;
  - j/ Violating provisions on intellectual property rights to domestically traded goods and services; and exported or imported goods and services;

k/ Violating provisions on origin of goods;

1/ Other violations in commercial activities according to the provisions of law.

2. The Government shall specify acts of violation of commercial law provided for in Clause 1 of this Article.

**Article 321.- Forms of handling of violations of commercial law**

1. Depending on the nature, seriousness and consequences of violations, violating organizations and individuals shall be handled in one of the following forms:

a Sanctions according to the provisions of law on handling of administrative violations;

b/ Where an act of violation involves all elements constituting a crime, the violator shall be examined for penal liability according to the provisions of law.

2. Where an act of violation causes harm to the interests of the State or legitimate rights and interests of organizations and/or individuals, compensation must be paid according to the provisions of law.

**Article 322.- Sanctioning of administrative violations in commercial activities**

The Government shall specify the sanctioning of administrative violations in commercial activities.

**CHAPTER IX: IMPLEMENTATION PROVISIONS**

Article 323.- Implementation effect

This Law takes effect on January 1, 2006.

This Law replaces the Commercial Law of May 10, 1997.

Article 324.- Detailed provisions and implementation guidance

The Government shall detail and guide the implementation of this Law.

This Law was passed on June 14, 2005, by the XI<sup>th</sup> National Assembly of the Socialist Republic of Vietnam at its 7<sup>th</sup> session.

**Chairman of the National Assembly**

**NGUYEN VAN AN**